

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF IDAHO POWER ) CASE NO. IPC-E-21-08**  
**COMPANY’S APPLICATION FOR )**  
**APPROVAL OR REJECTION OF AN )**  
**ENERGY SALES AGREEMENT WITH ) ORDER NO. 35067**  
**HYDROLAND OMEGA LLC, FOR THE )**  
**SALE AND PURCHASE OF ELECTRIC )**  
**ENERGY FROM ELK CREEK HYDRO )**  
**PROJECT )**

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On April 5, 2021, Idaho Power Company (“Company”) requested that the Idaho Public Utilities Commission (“Commission”) approve or reject an energy sales agreement (the “ESA”) with Hydroland Omega LLC (“Seller”) for energy generated by the Elk Creek Hydro Project (the “Facility”). *Application* at 1. The Facility is a qualifying facility (“QF”) near New Meadows, Idaho under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and has a 2350-kilowatt nameplate capacity. *Id.* The Company requested that its Application be processed by Modified Procedure. *Id.* at 5.

On April 29, 2021, the Commission set deadlines for interested persons to comment on the Application, and for the Company to reply. *See* Order No. 35024. Commission Staff (“Staff”) filed the only comments and recommended the Commission approve the ESA. The Company filed a Notice stating that it would not file reply comments.

Having reviewed the record, the Commission issues this Order approving the ESA as described in further detail below.

**APPLICATION**

The Company asserted that the Seller has been delivering energy generated by the Facility to the Company under an August 31, 1984, firm energy sales agreement that expired on April 30, 2021. *Application* at 4. The Company represented that the replacement ESA has a 20-year term with non-levelized, non-seasonal hydro published avoided cost rates as set by Order No. 34683. *Id.* Further, the Company stated the ESA contains capacity payments for the entire term of the agreement. *Id.* at 2. The Company requested that the Commission approve the ESA and declare all payments for purchases of energy under the ESA be allowed as prudently incurred expenses for ratemaking purposes. *Id.* at 7.

## STAFF COMMENTS

Staff recommended that the Commission approve the ESA. *Staff Comments* at 2. Staff's recommendation is based upon its review of the ESA, which focused on: 1) the 90/110 rule; 2) eligibility for and the amount of capacity payments; 3) pricing for the lapsed contract period; and 4) the avoided cost rates. *Id.*

Staff verified the ESA contains the 90/110 provision. *Id.* Staff also confirmed the ESA requires the Seller to give the Company at least five-day advanced notice if the Seller wants to adjust its Estimated Net Energy Amounts to comply with 90/110 firmness requirements. *Id.* Staff noted that the Monthly Estimated Net Energy Amounts for January, February, August, September, October, November, and December are zero. *Id.* This is consistent with the Facility's historical generation under the previous firm energy sales agreement. *Id.*

Staff stated the Facility should receive capacity payments for the replacement ESA's full term even though the original contract did not contain capacity payments. *Id.* Staff asserted that like the Black Canyon #3 project, in Case No. IPC-E-19-04, the Facility's original contract included avoided cost rates without a capacity payment because the Company was energy—not—capacity constrained at the time. *Id.* Staff stated that because the Facility has operated since the mid-1980s, through the Company's capacity deficiency periods, Staff is confident the Facility has contributed to meeting the Company's need for capacity. *Id.* Staff also believed the Facility should be granted capacity payments for its entire generation capacity amount during the term of the ESA since the nameplate capacity of the Facility did not change. *Id.*

Staff stated the original contract expired on April 30, 2021. *Id.* According to Article XXI of the new ESA, it will not be effective until the Commission has approved the ESA and declared all payments the Company makes to the Seller for purchases of energy are allowed as prudently incurred expenses for ratemaking purposes. *Id.* As a result, Staff noted if the Commission approves the ESA, there would be a lapsed contract period between May 1, 2021, and the new ESA's effective date ("Lapse Period"). *Id.*

Staff pointed to Case No. AVU-E-19-16, where the Commission approved both energy and capacity payments during a lapsed contract period for Stimson Lumber's QF. *Id.* In this case, Staff stated that the Seller desires to continue generating during the Lapse Period. *Id.* The Company will accept the delivery and pay the Surplus Energy Price as defined in Article 7.2 of the ESA. *Id.* The Company's payment, if approved, will be subject to any true-up, adjustment, or

rejection of terms and provisions, or the contract itself, by the Commission. *See Response to Staff's Production Request No. 3*, Letter Agreement, dated April 29, 2021, between the Company and the Seller. Staff noted the Surplus Energy Price is the price used for Surplus Energy, such as energy delivered outside of the 90/110 firmness band, and the value is the lesser of 85 percent of the market price or the contract price. *See Article 7.1 and Article 7.2 of the ESA*. The energy delivered during the Lapse Period would be treated as non-firm energy and paid accordingly. Staff believed this is reasonable. *Staff Comments* at 4.

Section B-7 of the ESA states that the Company cannot accept or pay for generation from this Facility if the Facility has not achieved the status of being a Company Designated Network Resource ("DNR"). *Id.* According to Staff, this Facility is a Company DNR because of the ESA. *Id.* Section B-7 also provides that the DNR status will continue if this ESA is 1) executed and approved by the Commission; 2) a Generator Interconnection Agreement ("GIA") has been executed by both parties; and 3) the Seller complies with the requirements of that GIA. *Id.* The Company confirmed the Facility will be a DNR during the Lapse Period. *Response to Staff's Production Request No. 3*. If the Commission rejects the ESA, then the Company would determine the DNR status at that time. *Id.*

Staff also reviewed the avoided cost rates proposed in the ESA and verified that the proposed rates are correct. *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. The Commission also has authority under PURPA and Federal Energy Regulatory Commission ("FERC") regulations to set avoided cost rates, 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 Staff's comments. Based on our review, we find it reasonable to approve the ESA because it contains Commission-approved terms that the Facility is eligible for based on its characteristics such as fuel source, project size, and renewal contract status. Additionally, the Facility has helped

meet the Company's need for additional capacity. The Commission thus finds it just and reasonable to include capacity payments for the duration of the ESA. The Commission also finds the Company's payments for purchases of energy and capacity under the ESA are prudently incurred expenses for ratemaking purposes.

We also find it appropriate for the Company to pay the Seller for any generation delivered from the Facility for the Lapse Period (May 1, 2021, until the service date of this Order) at the Surplus Energy Price as defined in Article 7.2 of the ESA as agreed to by the Company and the Seller in the April 29, 2021, Letter Agreement. We find this pricing for deliveries of generation from the Facility during the Lapse Period to be fair, just, and reasonable. We remain concerned, as we noted in the Stimson Lumber case, that after an energy sales contract expires, the lack of contractual commitment could create uncertainty for the Company's resource planning and leave the Company with little recourse should the seller experience a sudden change in operation or decide not to sell to the Company going forward. *See* Order No. 34692 at 4-5.

#### **ORDER**

IT IS HEREBY ORDERED that the Company's ESA with the Seller is approved, effective as of the service date of this Order.


IT IS FURTHER ORDERED that the Company shall pay the Seller for any generation delivered from the Facility during the Lapse Period at the Surplus Energy Price as defined in Article 7.2 of the ESA.

IT IS FURTHER ORDERED that the Company's payments for energy and capacity under the renewal ESA and the Lapse Period shall be 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 regarding 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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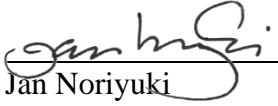
DONE by order of the Idaho Public Utilities Commission at Boise, Idaho this 8<sup>th</sup> day of June 2021.

  
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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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Jan Noriyuki  
Commission Secretary

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