

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: MATT HUNTER
DEPUTY ATTORNEY GENERAL

DATE: JUNE 18, 2021

SUBJECT: IN THE MATTER OF IDAHO POWER COMPANY’S APPLICATION FOR APPROVAL OF THE CAPACITY DEFICIENCY TO BE UTILIZED FOR AVOIDED COST CALCULATIONS; CASE NO. IPC-E-21-09.

On April 9, 2021, Idaho Power Company (“Company”) applied for Commission approval of its capacity deficiency period determination for use in avoided cost calculations under the Public Utility Regulatory Policies Act of 1978. In its Application, the Company anticipated its capacity deficiency period will begin in August 2028 and explained how this capacity deficiency period was calculated.

On April 28, 2021, the Commission issued a Notice of Application and Modified Procedure, setting a June 23, 2021 comment deadline and a June 30, 2021 reply comment deadline.

THE INDUSTRIAL CUSTOMERS OF IDAHO POWER’S THREE PLEADINGS

On June 10, 2021, the Industrial Customers of Idaho Power (“ICIP”) filed with the Commission a document making three separate pleadings: a petition to intervene, a motion to stay the procedural schedule to provide time for discovery, and a written protest in opposition to proceeding pursuant to Modified Procedure.

The ICIP explains that its pleadings are brought about by the Company’s recently issued “Notice of Intent—2021 All-Source Request for Proposal” (“NOI”), in which the Company notes that, “The need for additional capacity resources have been identified as early as Summer 2023 at approximately 80 MW, with peak deficits that grow to approximately 400 MW by Summer 2025.” ICIP Filing at 3. The ICIP observes that the NOI identifies 2023 as the Company’s first capacity deficit year, but the Company’s 2019 IRP and the Application in this proceeding identify 2028 as the Company’s first deficit year. *Id.*

Additionally, the ICIP asserts the Company is not complying with Order No. 32745. *Id.* The NOI states the Company “intends to issue an RFP as early as June 30, 2021.” The ICIP notes the Commission has directed the Company to “comply with RFP guidelines applicable to its Oregon service area, should the Company commence an RFP process for a new supply-side resource prior to the development of Idaho-specific RFP guidelines.” *Id.*; *see* Order No. 32745, Case No. IPC-E-10-03. The ICIP asserts that there are “as of this date, no ‘Idaho-specific RFP guidelines’...[and] Idaho Power has not complied with any of the Oregon RFP guidelines...” nor “obtained a waiver or other forgiveness of the applicability of the Oregon RFP guidelines.” ICIP Filing at 4.

Because of these developments, the ICIP files its three pleadings. *Id.* at 4-6. It petitions to intervene as a party under procedural Rule 71 (IDAPA 31.01.01.071). *Id.* at 4-5. It files a motion to stay the procedural schedule pending “resolution of the underlying contradictions in [the Company’s] NOI and IRP through discovery or other permissible means of disputed fact resolution.” *Id.* at 6; *see* IDAPA 31.01.01.056 and .256. Finally, the ICIP files written protest against the use of Modified Procedure. “[T]he complexity of the issues presented are not conducive to proceeding pursuant to written comments without first having the opportunity to engage in discovery and, depending on how the discovery proceeds, a hearing may be necessary.” ICIP Filing at 6.

IDAHYDRO’S FILING

On June 14, 2021, the Idaho Hydroelectric Power Producers Trust dba IdaHydro (“IdaHydro”) petitioned to intervene. It also joined the ICIP’s motion to stay the procedural schedule, and joined ICIP’s written protest in opposition to proceeding pursuant to Modified Procedure. *See* IDAPA 31.01.01.256.04.

STAFF RECOMMENDATION

Regarding the ICIP and IdaHydro’s petitions to intervene, Staff notes that both petitions are unopposed as of the writing of this memorandum. *See* IDAPA 31.01.01.075.

Regarding the ICIP’s motion to stay the procedural schedule, Staff notes the Commission will generally not act upon a motion for procedural relief in less than 14 days after the last joinder is filed. IDAPA 31.01.01.056 and .256. Procedural Rule 256 describes how a motion may request Commission action in less than 14 days, but the ICIP’s motion does not conform to these requirements and does not expressly request expedited procedural relief. Under

the Commission's procedural rules, then, the Commission would not act upon the ICIP's motion until June 28, 2021. However, this date is after the comment deadline in this proceeding (June 23, 2021).

Therefore, Staff recommends the Commission exercise its authority under procedural Rule 13 and act on this motion before the 14 days have elapsed. Procedural Rule 13 states, "Unless prohibited by statute, the Commission may permit deviation from these rules when it finds compliance with them is impracticable, unnecessary or not in the public interest." Based on its reading of the ICIP and IdaHydro's filings, Staff believes the ICIP and IdaHydro's immediate concern is to have additional time for discovery. With the comment deadline on June 23, 2021, considering the ICIP's motion after the deadline would be procedurally impracticable.

Staff recommends the Commission deny the ICIP's motion to stay the procedural schedule. However, Staff agrees with the ICIP that additional discovery is necessary to better understand the apparent contradiction between the implied capacity deficit date in the Company's NOI and the stated capacity deficit date in this proceeding and the Company's IRP. Therefore, Staff recommends the Commission delay the comment schedule by two weeks, with comments due July 7, 2021 and reply comments due July 14, 2021.

Finally, Staff recommends the Commission at this time take no action on the ICIP's written protest in opposition to proceeding pursuant to Modified Procedure. The Commission's Modified Procedure rules (IDAPA 31.01.01.201 through .204) envision the Commission considering such protests after the comment deadlines have passed.

COMMISSION DECISION

Does the Commission wish to:

- a. Deny the ICIP's motion to stay the procedural schedule pending discovery?
- b. Change the comment deadlines in this proceeding, setting a July 7, 2021 comment deadline and a July 14, 2021 reply comment deadline?



Matt Hunter
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