Office of the Secretary
Service Date
November 30, 2021

# BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| **IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OR REJECTION OF AN ENERGY SALES AGREEMENT WITH MICHAEL BRANCHFLOWER, FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY FROM THE TROUT-CO HYDRO PROJECT** | ) | **CASE NO. IPC-E-21-26**<br><br>**ORDER NO. 35239** |

On August 16, 2021, Idaho Power Company ("Company" or "Idaho Power") applied to the Commission for approval or rejection of an energy sales agreement ("Replacement ESA") with Michael Branchflower, ("Seller") under which Seller would sell and the Company would purchase electric generation from the Trout-Co Hydro Project ("Facility"). Application at 1. The Facility is a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Application at 2 and 4.

On September 8, 2021, the Commission issued a Notice of Application and set deadlines for public comments and the Company's reply comments. *See* Order No. 35161. Commission Staff ("Staff") and the Company filed comments. The public did not file comments. Having reviewed the record, we now approve the Company's Application as modified in the discussion below.

## BACKGROUND

Under PURPA, electric utilities must purchase electric energy from QFs at purchase or "avoided cost" rates approved by the Commission. 16 U.S.C. § 824a-3; *Idaho Power Co. v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013). The Commission has established two methods for calculating avoided costs, depending on the size of the QF project: (1) the surrogate avoided resource method, used to establish "published" avoided cost rates; and (2) the integrated resource plan method, to calculate avoided cost rates for projects exceeding published rate limits. *See* Order No. 32697 at 7-22.

## THE APPLICATION

The Facility is located near the city of Hagerman, Idaho. Application at 1. The Company and Seller entered into the Replacement ESA to replace the previous contract with the Company that was executed on January 7, 1985, and expires on November 30, 2021. *Id*. at 2 and

4. The Facility is already interconnected and selling energy to Idaho Power and the Replacement ESA specifies a Scheduled First Energy Date and Scheduled Operation Date of December 1, 2021. *Id*. at 5. The Replacement ESA at "[A]rticle XXI . . . provides that the ESA will not become effective until the Commission has approved all of the ESA's terms and conditions and declared that all payments Idaho Power makes to the Seller for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes." *Id*. at 6.

The Replacement ESA lists the nameplate capacity as 280 kW. *Id*. at 4. The Replacement ESA was signed by the Seller on August 9, 2021, and by the Company on August 12, 2021. Application at Attachment 1 at p. 35. The Replacement ESA has a 20-year term with non-levelized, non-seasonal hydro published avoided cost rates as set in Order No. 35052 for energy deliveries of less than 10 aMW. *Id*. at 4. The Replacement ESA is a replacement contract, and its rates contain capacity payments for the entire contract term. Application at 3-4.

According to the Replacement ESA, should the Facility exceed 10 aMW on a monthly basis, Idaho Power will accept the energy (Inadvertent Energy) that does not exceed the Maximum Capacity Amount, but will not purchase or pay for this Inadvertent Energy. *Id*.

The Replacement ESA provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Seller. *Id*. The Replacement ESA also provides for a Schedule 72 Generator Interconnection Agreement, or "GIA", between the Seller and Idaho Power. *Id*. The GIA is in the process but not yet signed. *Id*.

The Replacement ESA also provides that the notification of Net Energy Amount monthly adjustments described in paragraph 6.2.3 must be provided no later than 5 p.m. Mountain Standard Time on the 25th day of the month that is prior to the month to be revised. *Id*. at 6. If the 25th day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25th. *Id*.

## COMMENTS

### A. Staff Comments

Staff's comments focused on: (1) eligibility for and the amount of capacity payments; (2) the 90/110 Rule with at least five-day advance notice for adjusting Estimated Net Energy Amounts; and (3) avoided cost rates. Staff Comments at 2.

According to the Application, the Facility has operated at a nameplate capacity of 280 kW since the Facility began operation, and the Replacement ESA reflected this amount for

determining the amount of immediate capacity payments. *Id*. at 3. However, the original 1985 contract approved by the Commission listed the nameplate capacity of the Facility at 240 kW, and the contract has never been amended to update the nameplate capacity of the Facility. *Id*. As a result, Staff believed that the original contract provides the basis for rates and compensation in a renewal contract. *Id*.

Staff noted that the Facility has contributed to meeting the Company's need for capacity and should be granted immediate capacity payments. However, because the Facility's current contract has a stated nameplate capacity of 240 kW rather than 280 kW, Staff recommended that two sets of avoided cost rates be used in the Replacement ESA between the Company and the Seller from 2021 through 2025. *Id*. These two sets of rates would be the same starting in 2026, which is the Company's first deficit year. *Id*. The first rate is for any hourly generation equal to or less than 240 kilowatt hours ("kWhs") and would receive immediate capacity payments. *Id*. The second rate is for any hourly generation above 240 kWhs and would not receive capacity payments until the Company becomes capacity deficient in 2026. *Id*.

Staff confirmed the Replacement ESA contains the 90/110 Rule as required by Commission Order No. 29632. *Id*. at 4. Staff recommended implementing the 90/110 Rule based on two sets of avoided cost rates. *Id*. Similar to how the Sagebrush Hydro project was directed to implement the 90/110 Rule in Case No. IPC-E-19-38, Staff proposed to blend the two sets of All Hours Energy Price. *Id*.

Staff also noted that the Replacement ESA requires the Seller to give the Company at least five-day advance notice if the Seller plans to adjust its Estimated Net Energy Amounts for purposes of complying with the 90/110 Rule. *Id*. at 5.

Staff verified that the published avoided cost rates contained in the Replacement ESA are correct. *Id*.

Staff recommended that the Company review all QF contracts to ensure they reflect their actual facility parameters, and if they do not match, submit an amended contract to the Commission for approval. *Id*. at 4. In addition, Staff recommended that the Commission order the Company to include a provision to all new QF contracts, requiring the QF to submit an "as-built" description of the facility by its first operation date. *Id*. at 6. If the "as-built" description does not match the description in the original approved contract, then the contract should be amended to reflect the "as-built" description. *Id*.

**B. Company's Reply Comments**

The Company asserted that when the original contract was signed on January 7, 1985, it stated that the Facility had a 240 kW nameplate capacity. Reply Comments at 2. However, the Company stated that when construction was completed and the project became operational in December of 1986, the installed Facility had a 280 kW nameplate capacity. *Id*. The Company admitted that the original contract was not updated to reflect the 280 kW nameplate capacity. *Id*.

The Company argued that contrary to the assertion in Staff's Comments, the Sagebrush Hydro project and the Facility are not similarly situated. *Id*. The Company reasoned that the Facility's installed nameplate capacity (versus what was stated in the original contract) has always been 280 kW since it was built in 1986 while the Sagebrush Hydro project renewal energy sales agreement involved a facility whose nameplate capacity increased from 430 kW to 575 kW after it was rebuilt following expiration of the original contract. *Id*. Based on this distinction the Company argued that the Facility should receive capacity payments up to 280 kW. *Id.* The Company also asserted that no changes should be made to the implementation of the 90/110 Rule because the nameplate capacity has always been 280 kW since the Facility was built. *Id*. The Company also argued that bifurcating the rate and maintaining two separate 90/110 firmness calculations would cause administrative burdens to the Company. *Id*. at 5. Last, the Company asserted that the nameplate capacity has remained at 280 kW since the Facility was installed and the fact that the Replacement ESA has a different value from the expiring contract does not reflect a change in the physical characteristics or capabilities of the generator, but rather is simply a typographical error. *Id*.

The Company does not object to including a provision in all new PURPA contracts requiring the QF to submit an "as-built" description of the facility by the first operation date and if the "as-built" description does not match the description in the original approved contract, then to amend the contract to reflect the "as-built" description. *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. *Id.* 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.

Having reviewed the record, including the Company's Application, the Replacement ESA, Staff's Comments, and the Company's Reply Comments, the Commission finds it reasonable to approve the Replacement ESA as modified herein.

The Commission finds that the information contained in a legally enforceable energy sales agreement provides the parameters for the operation of the Facility and forms the basis for the rates earned throughout the contract term because the rates and terms in the original contract were, indeed, approved by the Commission. Consequently, we find that the terms of the original energy sales agreement are determinative.

The Commission further finds that the Facility's eligibility for capacity payments in the Replacement ESA be based on the nameplate capacity in the original contract. The additional incremental nameplate capacity (40 kW) will not receive capacity payments until the first deficit date identified at the time of this contract renewal (2026). *See* Order No. 34956.

Consistent with the discussion above, the Commission directs the Company to implement the 90/110 Rule for production during months that fall outside the 90/110 performance band with a contract price that is blended using the same method established in Case No. IPC-E-19-38. When capacity payments begin for the entire Facility (280kW) in 2026, blending will no longer be necessary.

Five-day advance notice has been deemed reasonable and authorized in prior Commission orders such as Order Nos. 34263, 34870, and 34937. The Commission approves the Replacement ESA requiring the Seller to give the Company at least five-day advance notice if the Seller plans to adjust its Estimated Net Energy Amounts for purposes of complying with the 90/110 Rule.

The Commission finds it reasonable and necessary for the Company to include a provision in all new PURPA contracts requiring the QF to submit an "as-built" description of the facility by the first operation date. If the "as-built" description does not match the description in the original approved contract, the contract should be amended to reflect the "as-built" description. The inclusion of this provision will proactively help to avoid errors of facility size in the future.

Lastly, the Commission finds, as modified herein, that the avoided cost rates in the Replacement ESA are just and reasonable, in the public interest, and that the Company's incurrence of such costs for purchases of energy and capacity are prudently incurred expenses for ratemaking purposes.

## ORDER

IT IS HEREBY ORDERED that the Company's Replacement ESA is approved with the following modifications:

1. The Replacement ESA will use two sets of avoided cost rates between the Company and the Seller from 2021 through 2025: any hourly generation equal to or less than 240 kWhs will receive immediate capacity payment, and any hourly generation above 240 kWhs will not receive capacity payment until the Company becomes capacity deficient in 2026.
2. The 90/110 Rule will be implemented based on two sets of avoided cost rates from 2021 through 2025 until the Facility becomes eligible for capacity payments.

The Company is directed to submit an updated or amended Replacement ESA consistent with this Order.

IT IS FURTHER ORDERED that all payments made by the Company for purchases of energy and capacity under the Replacement ESA, as modified herein, are allowed as prudently incurred expenses for ratemaking purposes.

IT IS FURTHER ORDERED that the Company shall include a provision to all new QF contracts requiring the QF to submit an "as-built" description of the facility by its first operation date. If the "as-built" description does not match the description in the original approved contract, then the contract should be amended to reflect the "as-built" description.

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 30th day of November 2021.

PAUL KJELLANDER, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ERIC ANDERSON, COMMISSIONER

ATTEST:

Jan Noriyuki
Commission Secretary

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