Office of the Secretary
Service Date
December 9, 2021

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER COMPANY'S APPLICATION FOR APPROVAL OR REJECTION OF THE SECOND AMENDMENT TO ITS ENERGY SALES AGREEMENT WITH MC6 HYDRO, LLC	)))))))	**CASE NO. IPC-E-21-30** **ORDER NO. 35256**

On August 26, 2021, Idaho Power Company ("Company") applied to the Commission requesting approval or rejection of the Second Amendment ("Amendment") to its Energy Sales Agreement ("ESA") with MC6 Hydro, LLC ("Seller") who sells energy generated by the MC6 hydro facility ("Facility"). The Facility is a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

The Amendment addresses when the Seller must notify the Company to revise future monthly Estimated Net Energy Amounts ("NEA") and a change to the nameplate capacity of the Facility's generator.

On October 1, 2021, the Commission issued a Notice of Application and Modified Procedure, setting public comment and Company reply deadlines. Commission Staff ("Staff") filed comments and the Company filed reply comments.

Having reviewed the record, we now approve the Application for the Amendment as discussed 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 Commission approved the Company's ESA with the Seller on July 21, 2018, for the purchase and sale of energy from the Facility in Case No. IPC-E-18-09. Application at 2 (citing

Order No. 34106). On June 21, 2019, the Commission approved the Company's First Amendment to the Scheduled First Energy Date and Schedule Operation date in the ESA "due to the unexpect[ed] passing away of one of the principle [sic] developers of the project." *Id.* (citing Order No. 34425).

THE AMENDMENT

The Amendment seeks to modify when the Seller must notify the Company of its intent to revise future monthly Estimated NEA. Currently, Section 6.2.3 grants the Seller the option to adjust the monthly estimated NEA within a specified time span. The Amendment states that "[a]fter the Operation Date, the Seller may revise any future monthly Estimated [NEA] by providing written notice no later than 5 PM Mountain Standard time on the 25th day of the month that is prior to the month to be revised." *Id.* at 3. If the 25th day falls on a weekend or holiday, the Company must receive written notice by the last business day before the 25th day of the month. *Id.*

The Amendment also provides for a change to Appendix B, Article B-1 of the ESA so that the designated nameplate rating of the generator is 2.3 megawatts ("MW") rather than 2.1 MW. *Id.* The Application indicated that the generator that was received and installed has a nameplate capacity of 2.3 MW—0.2 MW larger than the 2.1 MW generator listed in the ESA. *Id.* at 2.

STAFF COMMENTS

Staff recommended the Commission approve the request in the Application to modify the monthly notification requirements. In support of this recommendation, Staff recognized that a five-day advanced notice can "improve the accuracy of input used for short-term operational planning" and that the Commission has recently approved similar amendments with the same provision. Staff Comments at 3 (citing Order Nos. 34263, 34870, and 34937).

Staff further recommended the Company add a provision to its ESA to address modifications to the Facility during the contract term ("Provision"). *Id.* Staff noted that the Company has included the Provision in recent PURPA contracts it has filed. *Id.* Staff recommended that the Commission reject the Amendment if the parties did not include the Provision in their ESA. *Id.*

Staff agreed that the Company update the nameplate capacity, as provided in the Amendment, to reflect the change from 2.1 MW to 2.3 MW—the actual capacity of the installed generator.

Staff specifically recommended that two sets of avoided cost rates should apply in the Parties' ESA. *Id.* Staff believed it was reasonable "to recognize the original avoided cost rates in the ESA for the original nameplate capacity of 2.1 MW and use the avoided cost rates that were effective when the Second Amendment was signed for the incremental 0.2 MW." *Id.* at 5.

Staff recommended that the first set of avoided cost rates—those in the ESA and previously approved in Order 34106 —should apply to any hourly generation of 2.1 megawatt-hours ("MWhs") or less. Staff proposed that the other set of avoided cost rates—those that were effective when the parties signed the Amendment—should apply to any hourly generation above 2.1 MWhs. *Id.* at 5 (citing Attachment A); *see* Order No. 35052 (Approving the SAR Method rates which became effective to the Company's non-seasonal hydro QFs starting June 1, 2021).

Staff recommended implementing the 90/110 Rule by blending two sets of All Hours Energy Price ("AHEP") each contained within the two sets of avoided cost rates—one set for generation of 2.1 MWhs or less and one set for generation above 2.1 MWhs. Staff comments at 5. Staff proposed that the Company begin by "multiply[ing] the total amount generated equal to or less than 2.1 MWhs for each hour by the first set of [AHEP]." *Id.* Staff recommended that the Company next "determine the total amount generated above 2.1 MWhs for each hour and multiply it by the second set [AEHP]." *Id.* To calculate the blended AHEP, Staff proposed the Company divide "the sum of the two amounts by the total generation for that month." *Id.* Finally, Staff recommended that the blended rate should be compared against 85% of the market price, with the lower number "applied to the energy generated outside the 90/110 band for that month." *Id.* at 5-6.

Staff reiterated that, because it was likely that the Facility would generate above 2.1 MWhs in an hour, Staff's recommendation that the facility operate with the two-part rate would ensure that the Seller was compensated appropriately. *Id* at 6.

COMPANY'S REPLY

The Company noted its appreciation of Staff's review and recommendation for approval of both the five-day notification provision and the change in nameplate capacity. Reply comments at 3.

The Company disagreed, however, with Staff's recommendation to update the ESA by adding the Provision. *Id.* The Company believed Staff's proposal to add the Provision exceeded the "scope of the review and consideration of the Amendment and is inconsistent with Commission practice regarding changes to a previously approved PURPA ESA." *Id.* The Company further explained that it was not appropriate to add provisions to contracts whenever parties seek an amendment and, especially, when such a provision is unrelated to the requested amendment. *Id.* at 4. In sum, the Company expressed its willingness to include the Provision in any new contracts but objected to adding it to a previously approved ESA. *Id.*

The Company also disagreed with Staff's recommendation "to adopt two sets of avoided cost rates and implement the 90/1[10] Rule based on two sets of avoided cost rates . . . ." *Id.* at 4. The Company submitted that the nameplate capacity variance of 200 kilowatts ("kW") is a common variance "that can and does happen in the manufacture of hydroelectric turbines." *Id.* at 5. The Company explained that it is typical to have some variance above the minimum MW capacity of the requested generator so that it does not come in under specifications. *Id.* The Company further explained that this case is inapposite from other cases "where the Commission has bifurcated the eligibility for capacity payment." *Id.* Specifically, the Company pointed out that this ESA concerns a new hydroelectric project with a "new generator not previously under contract." *Id.*

The Company indicated that, based on the circumstances in this case and the lack of any evidence of the Seller's bad faith, the "bifurcated rate and 90/110 implementation should not be" applied. *Id.* The Company pointed to the Commission's current practice of allowing "QF's to size themselves with a nameplate capacity that can in some instances far exceed the published rate eligibility cap and still be eligible for published avoided rates if their generation meets the monthly average eligibility cap." *Id.* at 6. As an example, the Company mentioned the past practice "where a 20 MW [capacity] wind QF obtains a published rate contract under the 10 average MW standard." *Id.*

The Company summarized that, "given the de minimis nature of the variance and rate impact of the present case in relation to the administrative burden of tracking, maintaining, paying, and implementing such a bifurcated rate and 90/110 provisions", it did not support Staff's recommendation to implement the 90/110 rule based on two sets of avoided cost rates. *Id.*

COMMISSION DISCUSSION AND FINDINGS

The Commission has jurisdiction over this matter under Title 61 of the Idaho Code. 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, proposed Amendment, Staff's comments, and the Company's reply. The Commission has allowed a five-day advanced notification to adjust monthly Estimated NEA in previous cases. Based on our review, we find it fair, just, and reasonable to approve the Company's Amendment modifying the advance notice required for the monthly Estimated NEA.

The Commission further finds it reasonable to allow the Company to amend Appendix B, Article B-1 of the ESA so that the designated nameplate rating of the generator is 2.3 MW—the actual capacity of the generator installed—rather than the 2.1 MW nameplate capacity reflected in the original ESA.

The Commission finds it reasonable and in the public interest to require the Company and the Seller to apply two sets of avoided cost rates previously approved in Order Nos. 34106 and 35052 in their amended ESA. Specifically, the Commission finds that the first set of avoided cost rates should apply to any hourly generation equal to or less than 2.1 MWhs. *See* Order No. 34106. The Commission further finds that the other set of avoided cost rates—those that were effective August 11, 2021, when both parties signed the current Amendment—should apply to any hourly generation above 2.1 MWhs. *See* Order No. 35052.

The Commission also finds it reasonable and in the public interest to implement the 90/110 Rule by blending two sets of AHEP each contained within the two sets of avoided cost rates—one set for generation equal to or less than 2.1 MWhs and one set for generation above 2.1 MWhs.

We find Staff's recommendation to require the parties to include a facility modification provision outside the scope of this case. However, we find it to be a reasonable provision to consider including in any new ESA or ESA renewal.

ORDER

IT IS HEREBY ORDERED that the Amendment to the Company's ESA with the Seller —changing from a one-month advanced notice to a five-day advanced notice for adjusting Estimated NEA and changing the nameplate capacity of the generator from 2.1 MW to 2.3 MW— is approved.

IT IS FURTHER ORDERED that the Parties' amended ESA is approved with the following modifications:

1. The amended ESA will use two sets of avoided cost rates between the Company and the Seller: any hourly generation equal to or less than 2.1 MWhs will use the avoided cost rates contained in the ESA and approved in Order No. 34106; any hourly generation above 2.1 MWhs will use the avoided cost rates from the SAR Method approved in Order No. 35052.
2. The 90/110 Rule will be implemented based on two sets of avoided cost rates.

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 under the amended ESA, as modified herein, 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 about 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 9th day of December 2021.

PAUL KJELLANDER, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ERIC ANDERSON, COMMISSIONER

ATTEST:

Jan Noriyuki
Commission Secretary

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