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. 35296**

On December 9, 2021, the Commission issued Final Order No. 35256 approving an amendment to an Energy Sales Agreement ("ESA") between Idaho Power Company ("Company") and MC6 Hydro, LLC ("Seller" collectively with the Company, "Parties") with the condition that the Parties implement a bifurcated rate structure for payments to the Seller under the ESA. On December 30, the Company filed a petition ("Petition") asking the Commission to reconsider portions of Order No. 35256. On January 6, 2022, Staff timely filed an Answer to the Petition ("Answer") and the Seller filed a Petition for Cross-Reconsideration.

After careful consideration of the arguments presented, the Commission *grants* the Company's petition for reconsideration in part, the Seller's Petition for Cross-Reconsideration in part and acknowledges Staff's Answer. The Commission has ample information in the record to make its determinations on reconsideration without additional briefing or testimony. *See Idaho Code* § 61-626(2); Commission Rule 332. We approve the amended ESA subject to the modifications discussed below.

BACKGROUND

On August 26, 2021, the Company applied to the Commission requesting approval or rejection of the Second Amendment ("Amendment") to its ESA with the 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 addressed 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.

The Company represented that the Seller was unable to receive its generator unit from Wuhan China and was therefore unable to begin its scheduled operation date of July 30, 2019. Redacted Staff Comments at 2. As such, the Seller began operation on April 5, 2021, using an

installed generator with a nameplate capacity of 2.3 megawatts ("MW"), which was 0.2 MW larger than the 2.1 MW generator capacity listed in the Parties' ESA. *Id.* Accordingly, the Company sought to amend its ESA so that the designated nameplate rating of the generator read "2.3 MW" rather than "2.1 MW." *Id.*

Staff recommended that the Parties update the nameplate capacity in the ESA, as requested in the Amendment, to reflect the 0.2 MW increase in the actual capacity of the installed generator from the capacity originally denoted in the ESA. As pertinent here, Staff further recommended that the Parties use two sets of avoided cost rates: (1) the original avoided cost rates in the ESA for the original nameplate capacity of 2.1 MW; and (2) the avoided cost rates that were effective when the Second Amendment was signed for the incremental 0.2 MW. Order 35256 at 3.

The Company replied that it disagreed with Staff's recommendation to implement the two sets of avoided cost rates, generally arguing that the change in the nameplate capacity was de minimis; that the facts in this case were distinct from other cases where the Commission ordered parties to implement two sets of rates; and that the administrative burden of tracking, maintaining, paying, and implementing a bifurcated rate structure outweighed the de minimis nature of the variance. Company Reply Comments at 4-6.

On December 9, 2021, the Commission issued a final order approving the Amendment and further ordering that the Parties modify their ESA to use two sets of avoided cost rates and implement the 90/110 Rule based on the two sets of avoided cost rates. Order 35256 at 6.

On December 30, 2021, the Company filed its Petition requesting the Commission to grant reconsideration and set a procedural schedule that would allow for the Seller to submit additional facts and for the Company, the Seller, and Staff to provide additional written submissions regarding portions of Final Order No. 35256.

On January 6, 2022, Staff filed its Answer to the Petition.

On January 6, 2022, the Seller filed its Petition for Cross-Reconsideration stating that it concurred with the arguments in the Company's Petition, and specifically the recommendation that the Commission set a reasonable materiality threshold for "contracts at *de minimum* variance with the machinery name plate capacity on a project." Petition for Cross-Reconsideration at 1.

THE COMPANY'S PETITION

The Company specifically requested the Commission to reconsider the portions of Order No. 35256 pertaining to: (1) two avoided cost rates; (2) implementation of the 90/110 rule; and (3) the nameplate capacity of the Facility.

The Company represented that the Seller did not wish to implement the bifurcated rate structure in another Amendment or Replacement Contract and, moreover that, after a series of tests, it did not believe the Facility was capable of generation in excess of 2.1 MW. Petition at 5. The Company further represented that the Seller preferred to recertify the facility to a nameplate capacity of 2.1 MW, if possible, rather than "bifurcating the avoided cost rates as directed by Final Order No. 35256." *Id.*

In the alternative, the Company represented that the Seller wanted the Commission to consider limiting the provision of generation from the Facility in the ESA to 2.1 MW. *Id.* The Company proposed that this could be accomplished by modifying the ESA so that even if the stated "Nameplate Capacity" of the facility remained 2.3 MW, the "Maximum Capacity Amount" in the ESA could be stated as 2.1 MW. *Id.* The Company stated that if the ESA was properly modified, "the Facility would be limited to generating only up to the Maximum Capacity Amount, 2.1 MW, regardless of its stated Nameplate Capacity, and would not be compensated for any deliveries that exceed that [a]mount." *Id.*

The Company pointed out that the difference in the nameplate capacity as reflected in the ESA and the actual capacity of the installed generator—200 Kilowatts—was a "de minimus" variation "in relation to the administrative burden of amending, tracking, maintaining, paying, and implementing a bifurcated rate and 90/110 provision." *Id.* at 6. The Company further stated that "it was common for a certain amount of manufacturing variances to occur from the specifications sent to the manufacturer as to what is actually delivered, installed, and operates." *Id.* Rather than amending or replacing an ESA every time the actual capacity of the installed generator varied from the capacity delineated in the ESA, the Company proposed that the Commission adopt a "Materiality Threshold" which would provide that a small variance between the listed capacity and the installed capacity would be considered "immaterial" and not require a rate adjustment to the ESA.

The Company argued that the facts of this case were distinct from the facts of other cases where the Commission had ordered a bifurcated rate structure in a PURPA ESA. *Id.* at 6.

Specifically, the Company pointed out that the Facility was a new QF with a new ESA—not a replacement ESA—using the original generation unit that was installed at the Facility. *Id.* at 7. As such, the Company contended that this case was distinct from other cases where, after a project had been upgraded, replaced, or changed the generation units or the Facility, the Commission ordered a bifurcated rate for full-term capacity payment eligibility. *Id.* at 6-7 (citing Order No. 32697, Case No. IPC-E-19-38).

Finally, the Company contended that Order No. 35256 lacked adequate reasoning and did not address the respective positions of the Company. *Id.* at 8.

STAFF'S ANSWER

In its Answer, Staff did not reply to: (1) the suggestion to implement a "materiality threshold" for small variations in the listed nameplate capacity of QFs in PURPA ESAs from the installed capacity; (2) the proposal to recertify the facility to a nameplate capacity of 2.1 MW; and (3) the arguments that the facts of this case are distinct from other cases where the Commission had ordered a bifurcated rate structure in a PURPA ESA and that Order No. 35256 failed to state the reasoning behind the Commission's determination.

Staff did consider the proposal to limit the generation from the Facility in the ESA to 2.1 MW. Staff generally agreed with the approach of limiting the amount of instantaneous delivery of the Facility to 2.1 MW instead of using a bifurcated rate. However, Staff noted that the ESA, as it is currently written, did not limit ***all*** generation from the Facility above 2.1 MW for compensation. Specifically, Staff pointed out that the "Maximum Capacity Amount" paragraph in Appendix B-4 read in conjunction with paragraph 6.2 "Estimated Net Energy Amount" only limited compensation of generation above 2.1 ***average*** MW over any given month. Staff was concerned that both paragraphs would permit the QF to generate above 2.1 MW for short periods of time and still fall under the maximum capacity amount cap described in paragraph 6.2, since the cap is measured on a monthly basis. This potential arose because, as Staff noted, the maximum capacity amount, as stated in paragraph 6.2, is multiplied by the number of hours in the month.

Accordingly, Staff proposed that the Company change paragraph 6.2 of the ESA to limit compensation from the Facility for any generation over 2.1 Megawatt-hours ("MWhs") in any hour. Staff proposed that, if the Parties modified the ESA to reflect this limit, it would be unnecessary for the Parties to implement the bifurcated rate structure in their ESA.

STANDARD OF REVIEW

A. Reconsideration

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by reviewing the existing record, by written briefs, or by evidentiary hearing. IDAPA 31.01.01.311.03. Once a petition is filed, the Commission must issue an order saying whether it will reconsider the parts of the order at issue and, if reconsideration is granted, how the matter will be reconsidered. *Idaho Code* § 61-626(2).

Consistent with the purpose of reconsideration, the Commission's Rules of Procedure require that petitions for reconsideration "set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law." Rule 331.01, IDAPA 31.01.01.331.01. Rule 331 further requires that the petitioner provide a "statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." *Id*. A petition must state whether reconsideration should be conducted by "evidentiary hearing, written briefs, comments, or interrogatories." IDAPA 31.01.01.331.03. Grounds for reconsideration or issues on reconsideration that are not supported by specific explanations may be dismissed. IDAPA 31.01.01.332.

B. PURPA

The Commission has been granted authority to implement PURPA and is the appropriate state forum to review contracts between QFs and electric utilities. *Idaho Code* § 61-502, 61-503; *A.W. Brown v. Idaho Power Co.*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992); *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 755 P.2d 1229 (1987). Moreover, the Commission has the authority to engage in case-by-case analysis in setting its standards and requirements for implementation of PURPA. *Power Resources Group v. PUC of Texas*, 422 F.3d 231, 237 (5th Cir. 2005) citing *Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of [PURPA]*, 23 FERC ¶ 61,304, 1983 WL 39627 (May 31, 1983); *Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 917 P.2d 766 (1996). The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

COMMISSION DISCUSSION AND FINDINGS

The Commission has reviewed the record, the petitions, and Staff's Answer. The Commission declines the Company's and the Seller's request to implement a "materiality threshold" for small variations in the listed nameplate capacity of QFs in PURPA ESAs from the installed capacity and the proposal to recertify the facility to a nameplate capacity of 2.1 MW.

The Commission does acknowledge that this case is distinguishable from other cases where the Commission has ordered a bifurcated rate structure. A review of the record indicates that the Facility is a new QF with a new ESA using the original generation unit that was installed at the Facility. The record indicates that the Facility began operation on April 5, 2021, and applied to amend its ESA to reflect the discrepancy between the actual installed generator and the generator listed in the ESA on August 26, 2021. The Commission also notes Staff's assertion that, between its operation date and the date of its Application, the Facility did not generate any amount above 2.1 MW. Redacted Staff Comments at 6. We find that the above facts militate against requiring a bifurcated rate structure in the Parties' ESA in this case.

We also acknowledge that Staff and the Company both generally agree that limiting the instantaneous generation from the Facility to 2.1 MW would be a reasonable alternative to implementing a bifurcated rate schedule. We find this to be a reasonable proposal. However, we further acknowledge Staff's concern that Appendix B-4 of the ESA and paragraph 6.2 could, read in conjunction, be interpreted to allow for the Facility to generate above 2.1 MW for short periods of time while still falling under the maximum capacity amount cap described in paragraph 6.2. Accordingly, we find it reasonable that the Parties submit an updated ESA as a compliance filing to this case changing paragraph 6.2 to limit compensation from the Facility for any generation over 2.1 MWhs in any hour. If the Parties update paragraph 6.2 to reflect this limit, then the Parties need not implement a bifurcated rate structure in their ESA.

We find that payments by the Company for purchases of energy under the ESA, as modified by this Order, for any generation not exceeding 2.1 MWhs in any hour are allowed as prudently incurring expenses for ratemaking purposes.

ORDER

IT IS HEREBY ORDERED that the Seller's and the Company's petitions are granted in part. The Company shall file a new ESA as a compliance filing to this case that reflects the change to paragraph 6.2.

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

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or any final order in this case may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21st day of January 2022.

ERIC ANDERSON, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ATTEST:

Jan Noriyuki
Commission Secretary

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