RILEY NEWTON
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0318
IDAHO BAR NO. 11202

Street Address for Express Mail:
11331 W. CHINDEN BLVD, BLDG 8, STE. 201-A
BOISE, IDAHO 83714

Attorney for the Commission Staff

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** **STAFF'S ANSWER TO PETITION FOR RECONSIDERATION**

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 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.

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.

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

On December 30, 2021, the Company petitioned the Commission for reconsideration regarding the portion of Order 35256 "that directs modifications to the amended ESA pertaining to the use of two sets of avoided cost rates, the implementation of the 90/110 rule, and the nameplate capacity." Petition for Reconsideration at 1.

On January 6, 2022, the Seller filed a "Petition for Cross-Reconsideration."

PETITION FOR RECONSIDERATION

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 Megawatts ("MW"). *Id.* 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 Amount." *Id.*

The Company further pointed out that it had stated in its reply comments 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 going through the process of 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 in

the listed capacity versus the installed capacity would be considered "immaterial" and not require a rate adjustment to the ESA.

The Company submitted 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 is a new QF with a new ESA using the original generation unit that was installed at the Facility. *Id.* at 7.

The Company further submitted that "Final Order No. 35256 does not address the Parties' respective positions on the issues and contains no stated reasoning behind the Commission's determination to implement a bifurcated rate structure other than a statement that it is 'reasonable' and "'in the public interest.'" *Id.* at 8.

In conclusion, the Company requested that the Commission grant reconsideration and set a procedural schedule to allow the parties to submit written submissions and take into consideration additional factual information. *Id.*

In its Petition for Cross-Reconsideration the Seller stated that it concurred with the Company's positions.

STAFF'S ANSWER

Staff has no reply to: (1) the suggestion that the Commission 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.

That said, Staff notes the proposal to consider limiting the generation from the Facility in the ESA to 2.1 MW. Staff generally agrees 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 notes that the ESA, as it is currently written, does not limit "all" generation from the Facility above 2.1 MW for compensation. Specifically, Staff points out that the "Maximum Capacity Amount" paragraph in Appendix B-4 read in conjunction with paragraph 6.2 "Estimated Net Energy Amount" only limits compensation of generation above 2.1 "average" MW over any given month. Staff is concerned that both paragraphs 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 arises because, as Staff notes, the maximum capacity amount is multiplied by the number of hours in the month as stated in paragraph 6.2.

Accordingly, Staff proposes that the Company change paragraph 6.2 to limit compensation from the Facility for any generation over 2.1 Megawatt-hours in any hour. Staff proposes that, if the Parties modify the ESA to reflect this limit, it would not be necessary for the Parties to implement the bifurcated rate structure in their ESA.

Respectfully submitted this 6th day of January 2022.

Riley Newton
Deputy Attorney General

I:\Legal\ELECTRIC\IPC-E-21-30 MC6\IPCE2130_Answer to Pet for Recon_final_rn.doc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 6TH DAY OF JANUARY 2022, SERVED THE FOREGOING **STAFF'S ANSWER TO PETITION FOR RECONSIDERATION**, IN CASE NO. IPC-E-21-30, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

DONOVAN E WALKER
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
dwalker@idahopower.com
dockets@idahopower.com

ENERGY CONTRACTS
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
energycontracts@idahopower.com

TED SORENSON
MC6HYDRO LLC
711 E TURTLE POINT DR
IVINS UT 84738
ted@tsorenson.net

C. TOM ARKOOSH
ARKOOSH LAW OFFICES
PO BOX 2900
BOISE ID 83701
tom.arkoosh@arkoosh.com
erin.cecil@arkoosh.com

Keri J. Hawker

KERI J. HAWKER
Legal Assistant to Riley Newton