

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR)
APPROVAL OR REJECTION OF THE FIRST)
AMENDMENT TO THE ENERGY SALES)
AGREEMENT WITH SHOROCK HYDRO,)
INC. FOR THE SALE AND PURCHASE OF)
ELECTRIC ENERGY FROM THE ROCK)
CREEK #1 HYDRO PROJECT)
_____)

CASE NO. IPC-E-21-31

ORDER NO. 35259

On August 26, 2021, Idaho Power Company (“Company”) applied to the Commission for approval or rejection of the First Amendment to the Energy Sales Agreement (“ESA”) with Shorock Hydro, Inc. (“Seller”) for the energy generated by the Rock Creek #1 Hydro project (“Facility”). Application at 1. The Facility is a Public Utility Regulatory Policies Act of 1978 (“PURPA”) qualifying facility (“QF”). *Id.*

On October 6, 2021, the Commission issued a Notice of Application and set deadlines for public comments and the Company’s reply. Order No. 35188. Commission Staff (“Staff”) filed comments on October 27, 2021, and the Company filed reply comments on October 28, 2021.

Having reviewed the record, we now approve the First 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 Seller has been delivering energy to the Company under a firm energy sales agreement for the Facility that was executed on September 25, 2017, and approved under Commission Order No. 33949 on December 13, 2017. Application at 2.

PROPOSED AMENDMENT

The First Amendment modifies when the Seller must notify the Company to revise future monthly Estimated Net Energy Amounts (“NEA”). *Id.* at 2. The current ESA requires the Seller to notify the Company within a specified time period. *Id.* The First Amendment states that “[a]fter the Operation Date, the Seller may revise any future monthly Estimated Net Energy Amounts 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.” First Amendment at 1, §6.2.3. If the 25th day falls on a weekend or holiday, written notice must be received by the Company by the last business day before the 25th day of the month. *Id.*

The First Amendment provides this example: “...if the Seller would like to revise the Estimated Net Energy Amount for October, they would need to submit a revised schedule no later than September 25th or the last business day prior to September 25th.” *Id.* at 2-3.

STAFF COMMENTS

Staff recommended approval of the five-day advanced notice because monthly estimates provided closer to the time of delivery can improve the accuracy of input used for short-term operational planning. Staff Comments at 2. In addition, the five-day advanced notice has been authorized in prior Commission orders including Order Nos. 34263, 34870, and 34937. *Id.*

Staff also noted that the ESA does not contain any provision addressing modifications to the Facility during the contract term (“Provision”). *Id.* Staff noted that the Provision had been included in recent PURPA contracts filed by the Company. Staff recommended that the Commission reject the First Amendment if the parties did not include the Provision in their ESA. *Id.*

COMPANY REPLY COMMENTS

The Company disagreed with Staff’s recommendation to update the First Amendment by including the Provision. Company Reply at 2-3. The Company contacted the Seller, and it indicated that it would prefer that the Provision not be added to the First Amendment but stated it would accept the additional Provision if its objection was going to cause a significant delay to the approval of the First Amendment. *Id.* at 3.

The Company believed Staff’s recommendation to add a facility modification provision is outside the scope of this First Amendment. *Id.* at 4. The Company asserted the First Amendment as written is consistent with past amendments to the monthly NEA which the Commission has

approved for several QFs without changes to additional provisions. *Id.* The Company respectfully requested that the Commission issue an order approving the First Amendment without modification, and without inclusion of the Provision regarding facility modifications. *Id.*

The Company is willing to include the Provision in any new contracts, and has included such a provision in several, but the Company objects to adding this Provision to a previously approved ESA in the context of the Commission’s review of a contract amendment to an unrelated provision. *Id.*

COMMISSION FINDINGS AND DISCUSSION

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, 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 First Amendment, Staff’s comments, and the reply. The Commission has previously approved a five-day advanced notification requirement to adjust monthly NEA. Based on our review, we find it fair, just, and reasonable to approve the Company’s First Amendment modifying the advance notice required for the monthly NEA.

We find Staff’s recommendation to require the parties to include the Provision outside the scope of this case. However, we find it reasonable to consider including the Provision in any new ESA or ESA renewal.


ORDER

IT IS HEREBY ORDERED that the First Amendment to the ESA changing the deadline—from a one-month advanced notice to a five-day advanced notice—for when the Seller must notify the Company of their intent to revise future monthly NEA is approved.

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.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 16th day of December 2021.



PAUL KJELLANDER, PRESIDENT

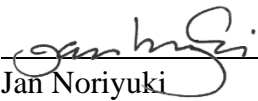


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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