

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF IDAHO POWER</b>	)	<b>CASE NO. IPC-E-21-33</b>
<b>COMPANY’S APPLICATION FOR</b>	)	
<b>APPROVAL OR REJECTION OF AN</b>	)	<b>ORDER NO. 35281</b>
<b>ENERGY SALES AGREEMENT WITH</b>	)	
<b>IDAHO POWER COMPANY AND J.R.</b>	)	
<b>SIMPLOT COMPANY FOR THE SALE AND</b>	)	
<b>PURCHASE OF ELECTRIC ENERGY FROM</b>	)	
<b>THE SIMPLOT – POCATELLO CSPP</b>	)	
<b>PROJECT</b>	)	

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On October 6, 2021, Idaho Power Company (“Company”) applied to the Commission for approval of an energy sales agreement (“ESA” or “Agreement”) with J.R. Simplot Company (“Seller”) for the energy generated by the Simplot – Pocatello CSPP project (“Facility”). The Company stated that, “[p]rior to the Effective Date of [the proposed] ESA th[e] Facility has been delivering energy to [the Company] in accordance with an ESA dated December 21, 2018.” Application at 4.

On November 2, 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 Seller filed reply comments.

Having reviewed the record, we now approve the ESA.

**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 Facility is near Pocatello, Idaho and has a 15.9 megawatt (“MW”) nameplate capacity. The Seller has been delivering energy from the Facility to the Company under an energy sales agreement executed December 21, 2018. The 2018 energy sales agreement expires on February 28, 2022.

## THE APPLICATION

The proposed ESA is for a 3-year term using the non-levelized, Other published avoided cost rates established in Order No. 35052, for replacement contracts and for energy deliveries of less than 10 average MW. *Id.* The Company represented that the new ESA “is nearly identical to the previously approved ESA between [the Company] and [the Seller], except for some non-substantive edits and clean-ups.” *Id.* at 3.

## STAFF COMMENTS

Staff recommended the Commission approve the ESA if the parties included a provision addressing future modifications to the Facility. Staff made its recommendation after reviewing: (1) the 90/110 rule with at least five-day advanced notice for adjusting Estimated Net Energy Amounts; (2) eligibility for and the amount of capacity payments; (3) verification of avoided cost rates; and (4) the lack of any provision in the ESA addressing potential modifications to the Facility.

Staff confirmed the ESA contained the 90/110 Rule as required by Commission Order No. 29632. Staff also confirmed that “the ESA requires the Seller to give the Company at least five-days advanced notice if the Seller wants to adjust its Estimated Net Energy Amounts for purposes of complying with 90/110 firmness requirements.” Staff Comments at 2 (citing Order Nos. 34263, 34870, and 34937).

Staff noted the Facility is currently operating under a Commission approved contract that contains capacity payments. *Id.* Staff further noted that “no modifications have been made to the Facility during the term of the current contract.” *Id.* As such, Staff believed that “the Facility should be granted immediate capacity payments for the full term of the ESA.” *Id.* at 3.

Staff’s review indicated that the avoided cost rates proposed in the new ESA reflect the rate authorized in Order No. 35052 and in effect when the previously approved ESA was executed.

Staff noted that the ESA did not contain any provision addressing modifications to the Facility during the contract term. Thus, Staff recommended the parties include the following provision in their ESA:

Any modifications to the Facility, including but not limited to the generator or turbine, that (1) increases or decreases the Facility Nameplate Capacity, or (2) changes the Qualifying Facility Category, or (3) changes the Primary Energy Source or (4) changes to the generator fuel and subsequently the Fueled Rate or Non-Fueled Rate, will require a review of the Agreement terms, conditions and pricing and Idaho Power, at its sole determination,

may adjust the pricing or terminate the Agreement. If the Agreement is terminated because of said modifications, the Seller will be responsible for any Termination Damages.

*Id.* at 3. Staff noted that the Company had included the provision in recent PURPA contracts approved by the Commission.

Staff recommended that the Commission approve the ESA contingent on the parties' inclusion of the facility modification provision. Staff also recommended that, if the parties updated the ESA, the Commission declare the Company's payments to the Seller under the ESA for energy be allowed as prudently incurred expenses for ratemaking purposes.

### **SELLER'S REPLY**

The Seller disagreed with Staff's recommendation to include the facility modification provision. The Seller submitted that there was no legal or practical justification for including the provision and that requiring the parties to add it would upset the arrangement the parties had negotiated and agreed to. Seller Reply Comments at 2.

The Seller represented that, contrary to Staff's representation, Article 23 of the ESA does contain a provision for addressing modifications to the Facility.<sup>1</sup> The Seller submitted that, due to the detailed description of the Facility provided in Appendix B-1 of the ESA, any Facility modifications would necessarily be addressed by the process outlined in Article 23 of the ESA.

The Seller also objected to including the facility modification provision on the basis that it provided the Company with the "unilateral . . . right to terminate the contract and impose termination damages on [the Seller]." *Id.* at 3. The Seller reiterated that, because the terms of the ESA include remedies for the Seller's breach, adding the provision was unnecessary. *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

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<sup>1</sup> Article 23 of the parties' ESA states: "[n]o modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission."

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 also has authority under PURPA 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.

The Commission has reviewed the record, including the Application, Staff’s comments, and the Seller’s reply. Based on our review, we find it fair, just, and reasonable to approve the Company’s ESA as submitted.

We find the facility modification provision to be a reasonable provision to generally consider including in any new ESAs and ESA renewals. However, based on the particular facts and circumstances in this case, we find Staff’s recommended facility modification provision unnecessary. We note that Article 23 of the ESA requires each party’s written consent and subsequent Commission approval of any modification to “the Agreement.” Appendix B-1 to the Agreement provides a detailed description of the Facility. Any changes to the Facility from its description in the ESA would constitute a modification of the parties’ ESA. Thus, any such modification would, pursuant to Article 23 of the parties’ ESA, require both parties’ signed agreement and subsequent Commission approval.

Based on the above reasoning, we approve the ESA as filed.

### **ORDER**

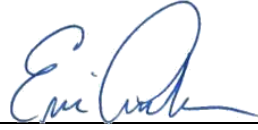
IT IS HEREBY ORDERED that the parties’ ESA is approved.

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

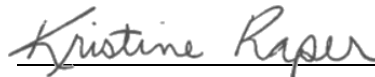
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order about any matter

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.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30<sup>th</sup> day of December 2021.



ERIC ANDERSON, PRESIDENT

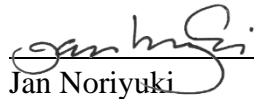


KRISTINE RAPER, COMMISSIONER



PAUL KJELLANDER, COMMISSIONER

ATTEST:



Jan Noriyuki  
Commission Secretary

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