



# Idaho Public Utilities Commission

P.O. Box 83720, Boise, ID 83720-0074

RECEIVED

2023 MAR -9 PM 12: 21

IDAHO PUBLIC  
UTILITIES COMMISSION

Brad Little, Governor

Eric Anderson, President

John R. Hammond, Jr., Commissioner

Edward Lodge, Commissioner

March 9, 2023

*Via Email*

Jan Noriyuki  
Commission Secretary  
Idaho Public Utilities Commission  
11331 W. Chinden Blvd., Bldg. 8  
Suite 201-A  
Boise, ID 83720

Re: Case No. IPC-E-21-42  
In the Matter of Idaho Power Company's Application for Approval of Special Contract and  
Tariff Schedule 33 to Provide Electric Service to Brisbie, LLC's Data Center Facility

Dear Ms. Noriyuki:

Attached for electronic filing, please find Idaho Public Utility Commission Staff's Replacement Redacted Comments in the above matter. No language was added to or modified in these Comments; the only change is the level of confidentiality.

The confidential, unredacted version of Commission Staff's Comments was previously sent in a separate encrypted email to the parties who signed the Protective Agreement in this matter.

Please feel free to contact me directly with any questions you might have about this filing.

Sincerely,

Riley Newton  
Deputy Attorney General

RN:kjh  
Enclosure(s)

I:\Legal\ELECTRIC\IPC-E-21-42 Brisbie\20230308\_Ltr re Staff comments.docx

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, SUITE 201-A  
BOISE, ID 83714

Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF IDAHO POWER )**  
**COMPANY’S APPLICATION FOR )** **CASE NO. IPC-E-21-42**  
**APPROVAL OF SPECIAL CONTRACT AND )**  
**TARIFF SCHEDULE 33 TO PROVIDE )**  
**ELECTRIC SERVICE TO BRISBIE, LLC’S )** **REPLACEMENT REDACTED**  
**DATA CENTER FACILITY )** **COMMENTS OF THE**  
**)** **COMMISSION STAFF**  
**)**

---

**COMES NOW** the Staff of the Idaho Public Utilities Commission, (“Staff”) by and through its Attorney of record, Riley Newton, Deputy Attorney General, and submits the following comments.

**BACKGROUND**

On December 22, 2021, Idaho Power Company (“Company”) applied to the Idaho Public Utilities Commission (“Commission”) seeking approval of a special contract for electric service (“Special Contract”) between the Company and Brisbie, LLC (“Brisbie”).

Because Brisbie will be taking electric service greater than 20,000 kilowatts (“kW”), — 20 megawatts (“MW”)—the Company and Brisbie have entered into a Special Contract. Application at 2. As outlined in Order No. 33038 at 11, “each special contract customer is

considered a separate class with different conditions and contract terms affecting their rates...”  
*Id.* at 2. The Special Contract is referred to as the Energy Services Agreement (“ESA”). *Id.* at 2.

The Special Contract was negotiated with the intent to help Brisbie achieve its goal of being served by 100% renewable energy. The Company and Brisbie have negotiated an ESA the Company believes is in the public interest and supports Brisbie’s objective of serving 100% of its energy requirements with renewable energy. The Special Contract includes provisions that outline a modified pricing framework that will cover the costs of adding Brisbie to the system. The Company presents a No-Harm Analysis that potentially shows that the Special Contract with Brisbie will benefit or hold retail customers harmless.

The Special Contract is similar in nature to the framework proposed in the Clean Energy Your Way – Construction (“CEYW-Construction”) offering, as outlined in Company’s pending Application. *See* Case No. IPC-E-21-40. The Company proposes to offer CEYW-Construction options to current or future customers, providing an opportunity to buy or access renewable resources to meet some or all their energy requirements. Brisbie is the first customer proposing to take service under the framework of the CEYW-Construction option.

### **Proposed Tariff Schedule 33**

The Company last filed for a base rate increase case in 2011. *See* Case No. IPC-E-11-08. The Company has not established a new base revenue requirement or updated its cost-of-service (“COS”) methodology since then, but the Company has received Commission approval to adjust its base rate revenue requirement since Case No. IPC-E-11-08. The proposed Schedule 33 includes attributes similar to other Special Contract customers, including Hoku Materials (“Hoku”) and J.R. Simplot Company’s Caldwell Facility, Schedule 32. *See* Tatum Direct at 10.

### **Power Purchase Agreement (“PPA”)**

The Application includes a draft PPA for procurement of renewable resources. In the Company’s confidential response to Production Request No. 3 and during discussion with the Company, Staff learned the PPA is a draft that outlines the agreements for each “new” renewable resource. Each subsequent PPA will remain confidential, will not be provided to the Commission, and will be covered in full by Brisbie. The Parties agree that each PPA will

provide energy directly to the Company's system and will be used to serve Brisbie. For each signed PPA (or a resource construction agreement<sup>1</sup>), the Company will update Schedule 33.

Each "new" renewable resource will be signed by the Company and Brisbie and will be directly assigned to Brisbie. The Company will procure resources for Brisbie, and requests that each "new" renewable resource not follow the Commission's procurement guidelines.<sup>2</sup> With Brisbie paying for 100% of each PPA, the Parties have agreed that Brisbie will receive a credit for the value from each "new" renewable resource. With each "new" renewable resource added, the Company will incorporate it into the base planning analysis of each subsequent integrated resource plan ("IRP"). *See* Tatum Direct at 13.

### **Energy Sales Agreement**

The Special Contract and the ESA are used in conjunction with each other. The ESA includes cost and credit components associated with retail electric service served to Brisbie. The terms and conditions in the ESA include provisions that it will hold other customers harmless. *See* Application at 2.

Within the ESA, the Company and Brisbie have included a proposed rate schedule that outlines a two-block rate structure. In Case No. IPC-E-08-21, the Commission approved a two-block pricing structure for Hoku. Similarly, the ESA for Brisbie includes a two-block pricing structure that includes a marginal cost of energy rate for energy consumption exceeding 20 MW. The marginal cost of energy rate covers the additional cost of "marginal" generation and/or market purchases required of the Company when Brisbie consumes more than 20 MW.<sup>3</sup> *See* Goralski Direct at 5-8.

### **STAFF REVIEW**

Staff reviewed the Application to ensure that other customers will not be harmed by providing electrical service to Brisbie. Staff's review focused on: (1) the overall structure and design of the rates; (2) the Company's No-Harm Analysis; (3) cost recovery for the construction

---

<sup>1</sup> The resource construction agreement referenced here is not the same as the Construction Agreement for transmission upgrades included in the Application. This resource construction agreement refers to a contractual agreement in case the Company builds a resource for a CEYW-Construction customer.

<sup>2</sup> The current guidelines are currently the same as Oregon's guidelines. However, IPC-E-21-41 seeks to change those guidelines for upcoming Request for Proposals.

<sup>3</sup> *See* confidential response to Production Request No. 5.



of related transmission facilities to connect Brisbie’s data center to the Company’s system; (4) the treatment of Renewable Energy Credits (“REC”) generated by Brisbie’s renewable resources and the allocation of system-generated RECs in the Power Cost Adjustment (“PCA”); (5) the provisions in the ESA mitigating risk; (6) treatment of the costs and benefits in the PCA and in base rates; and (7) the need for renewable resource PPAs to be authorized.

1. Rate Structure – The overall rate design framework provides a reasonable approach for payments to the Company for supplemental generation provided to Brisbie for electrical service and for credits to Brisbie for excess renewable generation exported from Brisbie’s renewable resource(s) to the Company’s system with the following exceptions:
  - a. An additional 85% adjustment should be applied to the proposed Excess Generation Credit rate;<sup>4</sup>
  - b. The Excess Energy Generation Credit rate should be based on the lower of the Excess Generation Credit Price or actual Mid-C market price (without the 85% adjustment) in each hour;
  - c. The Renewable Capacity Credit rate should be based on when the Company’s system becomes capacity deficient and not be paid until that date occurs;
  - d. The Renewable Capacity Credit rate should utilize the rate structure for IRP-based energy storage projects (*See* Order No. 34913), which would provide Brisbie avoided capacity cost payments on a dollar per kilowatt-hour (“kWh”) basis and only for energy delivered to the Company’s system during system peak and premium peak hours;
  - e. For Renewable Capacity Credits, the resource(s) used as a surrogate to determine avoided capacity cost should be identified using the most recently acknowledged IRP at the time that the PPA (or a resource construction agreement) is signed and should use the lowest cost capacity resource included for selection within the IRP;
  - f. For Renewable Capacity Credits, the peak and premium peak hours that are authorized in the Load and Natural Gas Forecast Annual Update for Public Utility Regulatory Policy Act of 1978 (“PURPA”) as required by Order No.

---

<sup>4</sup> See Order No. 29093.

34913 should be used to update the peak and premium peak per kWh rate on the same schedule as the other IRP updates utilizing the peak and premium peak hours authorized at the time of the IRP updates; and

- g. The Company should provide a separate filing for the approval of the Avoided Cost Averages and all other rate components determined from the IRP. This filing should be submitted for Commission approval soon after the IRP is filed so the Commission can process the application in parallel with the IRP filing and the Commission can authorize them soon after IRP acknowledgment.
2. Company's No-Harm Analysis – The Company's No-Harm Analysis indicates the Brisbie contract will hold other customers harmless but does not provide sufficient evidence on its own.
3. Transmission Facility Construction Cost – The Company's proposed method for recovering the cost of transmission to connect Brisbie to the Company's system to enable electric service as contained in the separate Construction Agreement should ensure other customers are held harmless.
4. REC Ownership – Brisbie should retain 100% of the RECs generated by its renewable resource(s). Staff believes a workshop is needed to determine the appropriate allocation for the value of system-generated RECs for Brisbie and for future CEYW-Construction offering customers.
5. Analysis of Provisions in the ESA – The provisions and guarantees in the ESA are sufficient to mitigate stranded-asset cost risk and Brisbie's financial ability to pay.
6. Accounting Treatment in the PCA and the next General Rate Case – The Company did not propose treatment of Schedule 33 costs, revenues, and loads in the development of future base rates. To ensure timely processing of the next general rate case, Staff recommends scheduling a workshop to discuss the treatment of Schedule 33 costs, revenues, and loads.
7. Authorization of Renewable Resource PPAs by the Commission – The Company only included a draft PPA while seeking blanket approval for future PPAs without Commission review of any signed PPA.
  - a. The Company should file each new PPA for review and approval by the Commission.

- b. The Company should provide the following items annually with the PCA filing: (1) the amount of consumption and generation from the renewable resources serving Brisbie and future CEYW -Construction projects, and (2) an annual Brisbie load forecast that is compared to Brisbie's annual generation forecast for all signed PPA's broken down on a monthly basis.

### **Analysis of Rate Structure and Design**

The Company plans to procure enough renewable resources to meet Brisbie's initial annual energy requirements in the short-term (first tranche) through a PPA and to procure or build additional resources to meet Brisbie's energy requirements going forward. As discussed earlier, the primary criteria Staff used to evaluate the ESA is whether the structure of the deal and—in particular—the design of the rates will prevent cost shifting to the Company's other retail customers. This is especially critical for the following reasons:

1. The acquisition of Brisbie's resource(s) will bypass the Company's established process used for planning and selecting the Company's other resources<sup>5</sup> that ensure the Company's new resources are needed for the system and are least-cost to customers;<sup>6</sup>
2. The resource will be connected to the system and will be used to serve system load as though it is a Company resource, but 100% of the energy attributes (i.e. RECs) will be claimed by Brisbie;
3. [REDACTED] impact to the Company's system and cost structure, increasing the overall risk to customers; and
4. The rate design for this contract will likely be used as a model for other CEYW-Construction customers further increasing the risk of potential impacts to customers in the future.

One of Staff's greatest concerns is the amount of excess energy from this and other CEYW-Construction projects. Although, Staff believes this should be priced at the Company's

---

<sup>5</sup> The only exception are must-take PURPA projects.

<sup>6</sup> The Company is requesting to procure Brisbie's renewable resources without seeking Commission approval that would otherwise require a determination of prudence by the Commission. Application at 4.

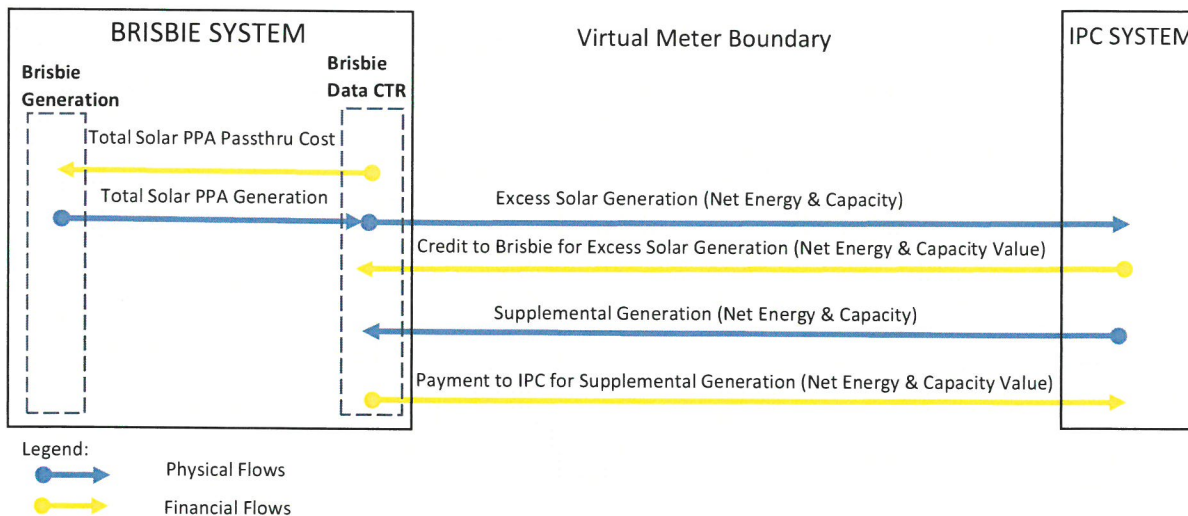
avoided cost, the avoided cost of energy—which is priced at the margin—is higher than the Company’s average embedded energy cost. Due to the size of Brisbie and future CEYW-Construction renewable resources, Staff believes there will eventually be upward pressure on all customer rates as the penetration of these projects become a greater proportion of the Company’s overall energy cost.

Staff’s Standard of Analysis

The capacity of the renewable resource(s) is being sized to meet 100% of Brisbie’s annual energy requirements. Because Brisbie will have relatively steady load during the day and its resource (Staff assumes solar) will not be able to produce during many of those hours, Brisbie will need to lean on the Company’s system when its resources are not meeting its demand. Application at 5.

As depicted in Diagram A, the Company’s proposed rate design can be analyzed based on a “virtual behind the meter” framework, as if Brisbie’s resource is generating into its own load.

Diagram A -Staff’s Ideal Framework



This is appropriate for two reasons. First, the structure of the ESA requires 100% of the renewable PPA costs to be passed through to Brisbie similar to other large customers that have

generation capability and generate into their own load.<sup>7</sup> Second, although the renewable resource(s) the Company will procure for Brisbie will connect directly to the Company's system separate from the Brisbie's data center, the data center consumption and the production from its renewable resource can and will be [REDACTED]

Utilizing a "virtual behind the meter" framework for Staff's analysis is ideal because: (1) net consumption ("Supplemental Generation") can be analyzed to ensure that the rates charged for electricity delivered to Brisbie from the Company's system should be based on principles of COS; and (2) net production (Excess Solar Generation) exported to the Company's system from Brisbie should be analyzed based on principles of avoided cost.

The principles of COS ratemaking are generally accepted by the Commission as the method for determining fair, just, and reasonable customer rates. As long as the Company bases its rates for Supplemental Generation from the Company's system on these same principles, Staff generally assumes rates are reasonable.

However, for energy exported or "sold" to the Company, the principles established through PURPA for holding customers harmless is to base the rates on avoided cost. Under PURPA, utility customers must be economically indifferent to purchases of Qualifying Facility ("QF") power by paying no more for power than the amount they would have paid but for the purchase from the QF.<sup>8</sup>

Diagram A illustrates the boundary between Brisbie's system and the Company's system and the transactions across that boundary that Staff used to evaluate both Excess (solar) Generation rates and Supplemental Generation rates. Ideally, the amount of energy and capacity consumed and exported by Brisbie would occur on a net basis to minimize any asymmetry or double counting of its value. As discussed below, the Company proposes to track and price energy production and consumption on a net basis. In the case of capacity and capacity-driven costs, the Company proposes 100% of Brisbie's resource(s) capacity contribution be sold to the Company's system, while 100% of Brisbie's capacity-related needs for consumption are to be sourced from the Company's system.

---

<sup>7</sup> Examples include Clearwater Paper in Avista's system and Amalgamated Sugar in the Company's system.

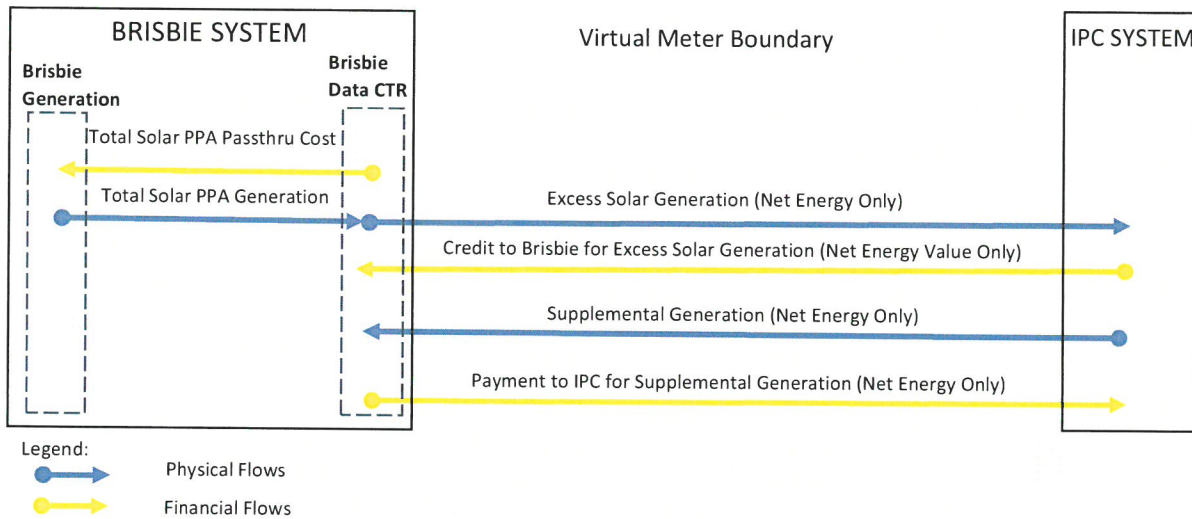
<sup>8</sup> *Indep. Energy Producers Ass'n, Inc. v. Cal. Pub. Utils. Comm'n*, 36 F.3d 848, 858 (9th Cir. 1994) ("If purchase rates are set at the utility's avoided cost, consumers are not forced to subsidize QFs because they are paying the same amount they would have paid if the utility had generated energy itself or purchased energy elsewhere.")



Energy Treatment

The Company’s proposed treatment for energy is consistent with Staff’s ideal framework since the amount of renewable generation and Brisbie’s consumption are netted [REDACTED] [REDACTED] Diagram B, below, depicts the energy treatment in Brisbie’s Special Contract and is consistent with Staff’s ideal framework for rates.

**Diagram B – Energy Treatment**



The Company plans to track the [REDACTED] and has developed its rate proposals for Supplemental Energy generation and Brisbie’s excess solar generation (net exports to the Company’s system) reflecting the differences in [REDACTED] depending on whether Brisbie is a net consumer or net producer. Staff supports the netting of energy [REDACTED] to capture [REDACTED] differences in the value of energy [REDACTED] [REDACTED]<sup>9</sup> and if the energy is being imported to or exported from Brisbie.

*Supplemental Energy*

Staff reviewed the Company’s proposed method for determining Supplemental Energy rates and recommends approving the method as proposed. Staff believes the proposed method is

<sup>9</sup> Although the time of day drives the largest differences in the value of electricity because of the amount of solar generation present in the market and customer consumption patterns, day of the week and seasons are also differentiated in the rates.

reasonable because it is based on COS incorporating attributes from approved special contracts but also includes [REDACTED] needed to appropriately charge Brisbie for its energy use supplied from the Company's system.

The Company's proposed method for determining Supplemental Energy rates is based on a two-block pricing structure. The first 20 MW of energy load falls into the Company's Block 1 pricing and is priced at current Schedule 19T energy rates. Schedule 19T rates are capped at 20 MW and are based on embedded average cost determined in the last rate case. All load greater than 20 MW is considered Block 2 [REDACTED]

The Commission approved a pricing structure in the Hoku special contract based on two blocks using embedded and marginal cost rates.<sup>10</sup> In the Hoku contract, Block 1 embedded rates were based on Schedule 19 retail rates and Block 2 marginal rates were based on PURPA published avoided cost rates. The load limit threshold between the two blocks in the Hoku contract was 25 MW, which was the size limit under Schedule 19 when the Hoku contract was negotiated.

Staff compared other Schedule 19T customer load shapes to Brisbie's load shape net of its renewable generation to determine if Schedule 19T rates would be reasonable to use for Block 1 rates. Staff discovered that Brisbie's load factor net of renewable generation can be lower and more variable than other 19T customers during certain periods. However, Staff believes it is reasonable to use Schedule 19T rates for Block 1 rates because the 20 MW load threshold in Block 1 contains the most stable pattern of consumption of Brisbie's load shape.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Staff believes using [REDACTED]

[REDACTED]

[REDACTED]

<sup>10</sup> See Case No. IPC-E-08-21.



██████████ By paying full price, Staff believes it will minimize upward pressure on the average cost of energy used to establish the embedded average cost of energy for all other ratepayers.

Staff reviewed the method for determining ██████████ used in Block 2 pricing and believes it is a reasonable proxy for ██████████  
██████████ Staff's main concern is that the costs are derived as a ██████████ This method deviates from customer rates that are typically derived from a test year and approved through a rate case. Additionally, the IRP is only acknowledged by the Commission. However, the proposed rates will be updated every two years upon acknowledgment of the IRP and only the first few years of ██████████ will be utilized. Staff believes these rates should be relatively accurate given that the inputs and assumptions use the latest historical data as a basis.

Because the IRP is not a Commission-approved document, Staff recommends that the ██████████ along with all other pricing components from the IRP be filed for Commission approval soon after the IRP is filed so the Commission can process the application in parallel with the IRP filing and authorize them soon after IRP acknowledgment.

#### *Excess Energy Generation*

Staff reviewed the Company's proposed method for determining the rates used to pay Excess Energy Generation (generation net consumption) credits and recommends approving the method as proposed in the Application, but with an additional 85% adjustment consistent with Schedule 86. Because these are ██████████ Staff believes ██████████ should also be backstopped by actual Mid-C prices so the price for the energy credits is determined by the lower of the proposed Aurora-based rates (with the additional 85% adjustment) or the actual Mid-C market prices.

The Company's proposed method for determining ██████████ is based on the ██████████  
██████████  
██████████  
██████████  
██████████ adjusted by 82.4% to determine a non-firm energy market price. The 82.4% non-firm adjustment mirrors the non-firm adjustment in the Company's Cogeneration and

Small Power Production Non-Firm Energy – Schedule 86.<sup>11</sup> Staff believes the [REDACTED] provides a reasonable avoided cost of energy price for non-firm energy when adjusted by the 82.4% adjustment factor as proposed; however, Staff believes that the 85% adjustment consistent with Schedule 86 needs to also be included [REDACTED]

The value of generation for Schedule 86 is determined using the monthly average daily Intercontinental Exchange (“ICE”) Mid-C Peak Avg and Mid-C Off-Peak Avg index prices. These prices are discounted by 82.4% to adjust for non-firm energy and discounted again by 85% to adjust for transmission, losses, and transaction costs associated with moving non-firm energy to sell into the market. The adjustment was originally proposed by the Company in Case No. IPC-E-01-40. In that case, the Company stated the following reasons for establishing the discount:

By establishing the purchase price as a percentage discount from the Mid-C Index, Idaho Power’s customers can be confident that non-firm energy Idaho Power is obligated to purchase under Schedule 86 can be resold in the wholesale market at a price that will recover Idaho Power’s purchase costs plus transmission costs. Conversely, the Company contends that when Idaho Power desires to retain the non-firm energy delivered by a seller under Schedule 86, Idaho Power can be assured that the purchase price will be at least as beneficial as a wholesale non-firm market purchase.<sup>12</sup>

Staff believes the Company’s reasons for proposing the adjustment for Schedule 86 are applicable in this case because the Company is obligated to take the excess generation from Brisbie’s renewable resource(s). In the case of Brisbie, this amount could be very large given the potential for up to [REDACTED] of nameplate capacity for its renewable resource(s) while Brisbie’s [REDACTED]. This would require the Company [REDACTED]. Including the 85% adjustment factor would ensure customers are not harmed by these circumstances.

Staff is also concerned with the risk of the [REDACTED] used to determine [REDACTED] being accurate. Staff believes it should be compared to the actual Mid-C market price [REDACTED] to safeguard customers from overpaying for excess generation from Brisbie’s renewable resources.

---

<sup>11</sup> See Response to Staff’s Production Request No. 29.

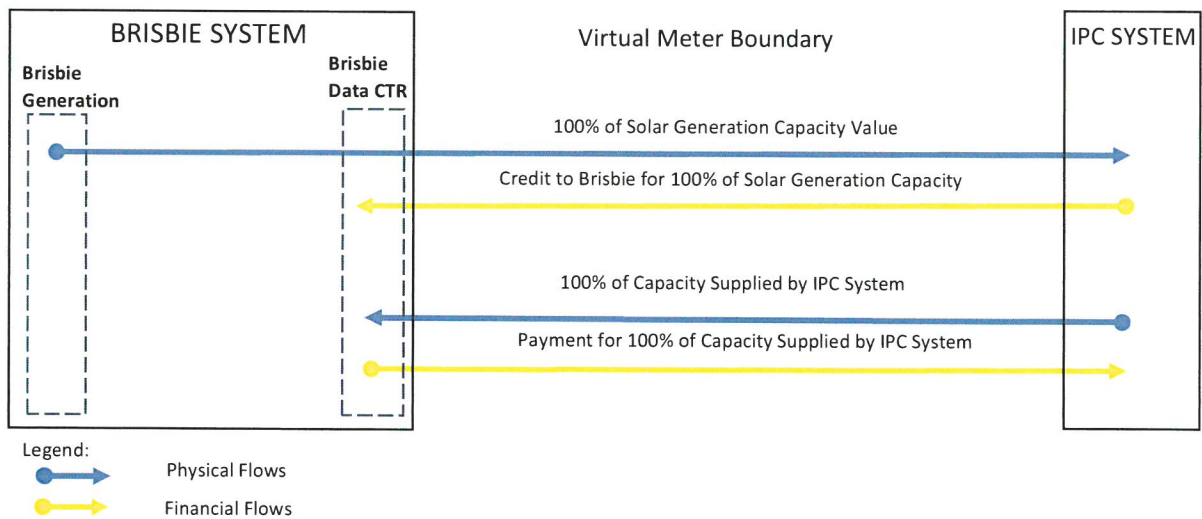
<sup>12</sup> See Application at 3 in Case No. IPC-E-01-40.

The Company's proposal in this case uses [REDACTED] in place of the [REDACTED]. Using [REDACTED] introduces a source of risk that could cause other customers to pay more than their avoided cost. Using the lower of the [REDACTED] and actual Mid-C prices would safeguard other customers from overpaying for excess generation from Brisbie's renewable resources.

Capacity Treatment

The Company's proposed treatment for capacity is inconsistent with Staff's ideal framework because the capacity of Brisbie's renewable resource is not [REDACTED]. The Company assumes 100% of the capacity needed for the Brisbie data center will be provided by the Company's system and that 100% of the contribution of capacity from its renewable resources will be provided to the Company's system and [REDACTED]. Staff believes the [REDACTED] can still accomplish Staff's main principle of holding other customers harmless.

Diagram C – Capacity Treatment



The capacity treatment in the Brisbie contract has [REDACTED]

[REDACTED] Staff believes that PURPA provides the most appropriate standard to evaluate the Company's [REDACTED]

*Renewable Capacity Credit*

Staff reviewed the Company's proposed method for determining the Renewable Capacity Credit rate structure and recommends the credit be based on a different method than proposed by the Company. Staff recommends two changes. First, Brisbie should not receive any payments for avoiding capacity cost until the Company's system is capacity deficient. Second, payments for the contribution of capacity should be based on [REDACTED]

[REDACTED]

The Company's proposed method for determining the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Commission does not allow PURPA projects to receive capacity payments for avoided capacity cost until the Company's system first becomes capacity deficient.<sup>13</sup> This is well established when the Commission stated:

In calculating a QF's ability to contribute to a utility's need for capacity, we find it reasonable for the utilities to only begin payments for capacity at such time that the utility becomes capacity deficient. If a utility is capacity surplus, then capacity is not being avoided by the purchase of QF power. By including a capacity payment only when the utility becomes capacity deficient, the utilities are paying rates that are a more accurate reflection of true avoided cost for the QF power.

Order No. 33159, p. 7.

As stated earlier, Staff believes PURPA provides the best standard of comparison for compensating Brisbie for avoiding capacity cost. Since the Application proposes to compensate

---

<sup>13</sup> See Order Nos. 33377, 33159, and 33898.

Brisbie [REDACTED] it is like the [REDACTED] of a QF through PURPA. Staff recommends that the payment for the [REDACTED] should not begin for any tranche of capacity procured for Brisbie until the authorized first capacity deficiency date occurs. The deficiency date used should be the date authorized through the Company's biannual PURPA deficiency date filing at the time the PPA—or a resource construction agreement—is signed by both the Company and Brisbie.

Staff also recommends that the rate structure for [REDACTED] based on the avoided capacity cost rate and payment structure used to compensate PURPA IRP-based energy storage QF projects as approved in Case No. IPC-E-20-02.<sup>14</sup> Staff believes that the [REDACTED] of this rate structure should be used because the [REDACTED]  
[REDACTED]  
[REDACTED]<sup>15</sup> This rate structure only allows [REDACTED] during peak and premium peak hours, which are determined through the Load and Natural Gas Forecast Annual Update filings. The peak and premium peak hours are the hours in the year that determine the need for incremental capacity in the Company's system. By only allowing capacity payments for energy delivered during these hours, resources are compensated for the capacity avoidance they deliver ensuring accountability for their compensation.

Staff recommends that the [REDACTED] should be based on the [REDACTED] resource and its avoided capacity cost should not change for the life of the contract. Staff further recommends that this [REDACTED]  
[REDACTED]  
[REDACTED] the peak and premium peak hours authorized in the Load and Natural Gas Forecast Annual Update for PURPA could change [REDACTED]  
[REDACTED]

[REDACTED] Because the structure of the ESA [REDACTED]  
[REDACTED] Staff recommends [REDACTED]  
[REDACTED]

---

<sup>14</sup> See Order Nos. 34794 and 34913.

<sup>15</sup> See Order Nos. 32262, 32697, and 34794.



Staff believes its proposed rate and payment structure is appropriate for several reasons. As discussed earlier, this structure ensures that Brisbie's resources are compensated for the [REDACTED] they deliver providing accountability. Second, this rate and payment structure was developed to provide compensation for [REDACTED] and the ESA mentions [REDACTED] could potentially be added in the future. See Tatum, Direct, Exhibit 1 at 13. [REDACTED] [REDACTED] are likely to occur in the future, this structure can be applied regardless of its source because it is based on the [REDACTED] and not on the [REDACTED]. As the Company provides additional CEYW-Construction offerings in the future, the use of this rate structure can provide consistency across similar projects.

*Demand Charges*

Staff reviewed the Company's proposed method for determining demand charges and recommends approving the demand charges as proposed. Staff believes the proposed demand charges are reasonable because the methods used to determine the charges are like other approved special contracts and are based on COS.

The Company's proposal for [REDACTED] [REDACTED] Block 1 demand charges are consistent with Schedule 19T demand charges. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] See Goralski Direct at 14. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Staff supports the [REDACTED] proposed by the Company because they are consistent with past approved special contracts and appropriately recovers [REDACTED]

### **Company's No-Harm Analysis**

Staff reviewed the Company's No-Harm Analysis and believes it indicates that the Brisbie contract will hold other customers harmless but does not provide sufficient evidence on its own.

The Company compared the net present value results of Aurora production cost model runs both with and without the Brisbie ESA. The results of the Company's analysis show that the system with the Brisbie contract could provide a [REDACTED]

However, Staff believes the analysis is insufficient because the analysis relies on a single set of input assumptions that could change over the life of the Brisbie contract. Because the analysis does not evaluate a range of values for the different risk variables that could affect the results of the analysis, Staff did not rely on the results of the No-Harm Analysis as a primary consideration in determining a recommendation for the Company's rate proposals.

### **Transmission Facility Construction Costs**

Staff reviewed the Construction Agreement included as Confidential Exhibit No. 2 and believes that the costs necessary to provide ongoing electric service to the Brisbie data center, including transmission construction cost and ongoing operation and maintenance cost up to the point of delivery, will not be borne by other ratepayers.

### **REC Ownership and Treatment of System-Generated RECs**

According to the ESA, any environmental attributes (also known as RECs) associated with the output from the renewable resources acquired by the Company for Brisbie will be transferred directly from the project or developer to Brisbie. According to the Company, this is one of the primary purposes of the CEYW-Construction offerings, which Staff generally supports.

However, Brisbie plans to annually supply 100% of its energy requirements from its renewable resources. To accomplish its goal, Brisbie is theoretically using the Company's system as a battery. Therefore, any energy it generates with its own resources, stores on the Company's system, and then redistributes back to Brisbie will have RECs already owned by Brisbie based on when it was originally generated. Given this perspective, Staff questions



whether it is fair for Brisbie to receive REC value from the system in the same way as other customers receive REC value through the PCA. Because this question was never addressed in the Application, Staff recommends the Company hold a workshop with Staff and other interested parties to evaluate how REC benefits in the PCA should be allocated to Brisbie and other CEYW-Construction offering customers before they begin generating renewable energy and derive the associated environmental attributes.

**Analysis of Provisions in the ESA to Mitigate Risk**

For each CEYW-Construction customer, Staff recommends that each ESA include parent guaranties for the life of the PPA. Each guaranty is to protect the Company’s other customers from any potential cost shifting that may arise when a contract terminates. The Company and Brisbie have written into the ESA additional provisions that should financially protect customers.

[REDACTED]

[REDACTED]

See Tatum Direct at 10-11.

With these [REDACTED] in place, the ESA should protect other retail customers. Staff would like to see similar [REDACTED] in future CEYW-Construction contracts for “new” and existing customers.

**Accounting Treatment in the PCA and the next General Rate Case**

Staff supports the Company’s proposed accounting treatment for Schedule 33 in the PCA. However, the Company did not propose treatment of Schedule 33 costs, revenues, or loads in the development of future base rates. Staff recommends setting up a workshop to discuss the treatment of Schedule 33 costs, revenues, and loads to ensure timely processing of the next general rate case.

The Company will pay the contract rate for the PPA, which will be recorded to Account 555. Brisbie will pay 100% of the output—matching these costs with corresponding revenue recorded to Account 442. Because Brisbie’s payment will fully offset the cost of the PPA, this amount will be excluded from the PCA.

In the event that the PPA facility [REDACTED]

[REDACTED] The costs will therefore be recorded to Account 555 and treated as other net power supply expenses and flow through the PCA.

Block 1 energy and capacity, which are comprised of consumption for the first 20 MW are priced at Schedule 19T rates. Block 1 energy will be included in the PCA in the same manner as other retails sales. Block 2 [REDACTED] [REDACTED] which will also be recorded in the same manner as other retail revenues.

Block 2 [REDACTED]

[REDACTED] While this block will also be recorded to Account 442, for ratemaking treatment, it will be included in the revenue requirement and PCA as surplus sales, offsetting total Net Power Supply Expense. Therefore, Block 2 energy sales will be excluded from the Sales Based Adjustment Rate.

### **Authorization of Renewable Resource PPAs by the Commission**

In the Application, the Company proposes that future PPA’s with Brisbie will not be filed for review or approval by the Commission. For the following reasons, Staff recommends the Company file all CEYW-Construction PPA contracts with the Commission for its review and approval.

Staff agrees that the selection of the resource and rates in the PPA do not need to be authorized by Commission because the cost of the PPA will be 100% passed through to Brisbie and because Staff believes [REDACTED] [REDACTED] are reasonable if Staff’s modifications are implemented. However, there are other elements within the PPA Staff believes should be reviewed and authorized by the

Commission—including the interconnection agreement within the PPA—to ensure no costs are passed on to the general body of ratepayers.

Second, Staff is concerned that the [REDACTED] the Company will be [REDACTED]

[REDACTED] To ensure that Brisbie meets this criterion and does not overproduce, Staff recommends that the Company provide the following items annually with the PCA filing: (1) the amount of consumption and generation from the renewable resources serving Brisbie and other CEYW-Construction projects; and (2) an annual Brisbie load forecast that is compared to Brisbie’s annual generation forecast for all signed PPA’s broken down on a monthly basis. The recommended items will allow Staff and the Commission to ensure that Brisbie does not become a net producer of energy, which could result in a cost shift to other retail customers.


## **STAFF RECOMMENDATIONS**

Staff recommends approval of the ESA between the Parties contingent on the following modifications if approved by the Commission as outlined below:

1. All pricing components determined from the IRP should be filed separately for Commission approval soon after the IRP is filed so the Commission can process the application in parallel with the IRP filing and authorize them soon after IRP acknowledgement;
2. For Excess Energy Generation credits, apply an additional 85% adjustment consistent with Schedule 86;
3. For Excess Energy Generation credits, utilize the lower of the proposed Aurora-based rates (with the additional 85% adjustment) and actual Mid-C market prices on an hourly basis;
4. For Renewable Capacity Credits, Brisbie not receive any payments for avoiding capacity cost until the Company’s system is capacity deficient;
5. For Renewable Capacity Credits, the rate structure should be based on the avoided capacity cost rate and payment structure used to compensate PURPA IRP-based energy storage QF projects as approved in Case No. IPC-E-20-02;
6. For Renewable Capacity Credits, the resource(s) used as a surrogate to determine avoided capacity cost should be identified using the most recently acknowledged

- IRP at the time that the PPA (or a resource construction agreement) is signed and should use the lowest cost capacity resource included for selection within the IRP;
7. For Renewable Capacity Credits, the peak and premium peak hours that are authorized in the Load and Natural Gas Forecast Annual Update for PURPA as required by Order No. 34913 should be used to update the peak and premium peak per kWh rate on the same schedule as the other IRP updates utilizing the peak and premium peak hours authorized at the time of the IRP updates;
  8. Schedule a workshop to discuss the treatment of Schedule 33 costs, revenues, and loads in base rates prior to the next general rate case;
  9. The Company hold a workshop to evaluate how system-generated REC benefits are passed on to CEYW-Construction customers in the PCA;
  10. Every CEYW-Construction customer PPA—or a resource construction agreement—be reviewed and authorized by the Commission; and
  11. The Company provides the following items annually with the PCA filing: (1) the amount of consumption and generation from the renewable resources serving Brisbie and other CEYW-Construction projects; and (2) an annual Brisbie load forecast that is compared to Brisbie’s annual generation forecast for all signed PPA’s broken down on a monthly basis.

Respectfully submitted this 9<sup>th</sup> day of March 2023.



---

Riley Newton  
Deputy Attorney General

Technical Staff: Travis Culbertson  
Michael Eldred  
Kathy Stockton

i:umisc/comments/ipce21.42tbtnccklsttme comments

## CERTIFICATE OF SERVICE

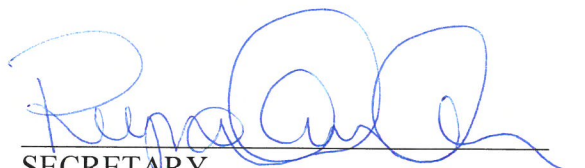
I HEREBY CERTIFY THAT I HAVE THIS 9<sup>th</sup> DAY OF MARCH 2023, SERVED THE FOREGOING **REPLACEMENT REDACTED COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-21-42, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

DONOVAN E WALKER  
IDAHO POWER COMPANY  
PO BOX 70  
BOISE ID 83707-0070  
E-MAIL: [dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[dockets@idahopower.com](mailto:dockets@idahopower.com)

TIM TATUM  
VP REGULATORY AFFAIRS  
IDAHO POWER COMPANY  
PO BOX 70  
BOISE ID 83707-0070  
E-MAIL: [ttatum@idahopower.com](mailto:ttatum@idahopower.com)

MICHAEL HECKLER  
COURTNEY WHITE  
CLEAN ENERGY OPPORTUNITIES FOR  
IDAHO INC  
3778 PLANTATION RIVER DR SUITE 102  
BOISE, ID 83703  
E-MAIL: [mike@cleanenergyopportunities.com](mailto:mike@cleanenergyopportunities.com)  
[courtney@cleanenergyopportunities.com](mailto:courtney@cleanenergyopportunities.com)

KELSEY JAE  
LAW FOR CONSCIOUS LEADERSHIP  
920 N. CLOVER DR.  
BOISE, ID 83703  
E-MAIL: [kelsey@kelseyjae.com](mailto:kelsey@kelseyjae.com)



SECRETARY