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**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF IDAHO POWER
COMPANY'S APPLICATION FOR APPROVAL
OF A REPLACEMENT SPECIAL CONTRACT
WITH MICRON TECHNOLOGY, INC. AND A
POWER PURCHASE AGREEMENT WITH
BLACK MESA ENERGY, LLC

Case No. IPC-E-22-06

**CITY OF BOISE CITY'S
PETITION FOR
RECONSIDERATION**

COMES NOW, the city of Boise City, herein referred to as "Boise City," and pursuant to Rules 331 through 340 of the Rules of Procedure of the Idaho Public Utility Commission (IDAPA 31.01.01.331 – 31.01.0.340), hereby respectfully submits its Petition for Reconsideration of Order No. 35482. As grounds, Boise City states as follows:

The Idaho Public Utilities Commission ("Commission") made numerous substantive errors in Order No. 35482 that must be corrected on reconsideration. The Commission erred by making programmatic decisions for the as-of-yet unapproved Clean Energy Your Way program ("CEYW"), despite a separate docket open for such decisions and the lack of adequate notice in this docket for programmatic CEYW decisions. The Commission's findings were not based on

substantial competent evidence in the record and resulted in discriminatory contract terms that unduly burden Micron Technology, Inc. (“Micron”) and future Clean Energy Your Way – Construction Option (“CEYW-CO”) participants. The Commission’s decision will unfairly deter participation in CEYW-CO despite system-wide benefits created by a reasonable CEYW-CO.

I. The Commission chose the wrong docket to make programmatic decisions for the Clean Energy Your Way program.

Idaho Power filed an application for Commission approval of the Clean Energy Your Way (“CEYW”) program on December 2, 2021, which initiated docket IPC-E-21-40. Idaho Power filed its application in this docket for approval of the Micron energy sales agreement “Micron ESA” and the Black Mesa power purchase agreement (“PPA”) on March 10, 2022. The proper place for the Commission to make programmatic decisions on CEYW is IPC-E-21-40; not this docket. The Commission’s Notice of Application and Notice of Modified Procedure in this docket did not provide notice that generally applicable CEYW-CO decisions would be made in this docket. *See* Order No. 35367. This is a violation of due process for entities such as the City of Boise that may wish to participate in the CEYW-CO program in the future but were unaware that CEYW-CO decisions would be made in this docket rather than IPC-E-21-40.

The fundamental holding of this case explicitly applies to other CEYW-CO projects. In justifying its change to the pricing components, the Commission stated, “However, we find that traditional principles of [cost of service] and avoided cost based on historical data and approved by the Commission provide a reasonable and proven framework for analyzing the pricing and compensation structure under the Micron ESA and other CEYW-CO projects.” Order No. 35482 at 15 (emphasis added). The Commission made numerous findings that it explicitly stated will apply to other CEYW-CO projects and made other findings that will apply to other CEYW-CO projects by establishing precedent. For example, the Commission stated its capacity findings in

this docket will “create methodological consistency between CEYW-CO projects[.]” Order No. 35482 at 17. Also in this docket, the Commission determined it would review other future CEYW-CO project PPAs individually. *Id.* at 17-18. The result is a deprivation of due process for other potential CEYW-CO project participants and a decision that appears to be made, at least in part, based on the records of other dockets.

II. The Commission’s justification for disregarding the pricing agreed upon by the parties is not based on evidence in the record.

The crux of the Commission’s finding is that the Company’s “No-Harm Analysis” was insufficient because it relied on a single set of assumptions and did not provide a range of values for different risk variables. Order No. 35482 at 15. The Commission stated,

The gist of the Company’s argument against applying many of Staff’s recommendations is that the Company’s no-harm analysis validated that the pricing and compensation structure under the Micron ESA would not harm other customers. However, the Company acknowledged that its analysis relied on a ‘single set of input assumptions’ and did not, as Staff noted, provide a ‘range of values for different risk variables.’ [Company Reply Comments] at 3. The Company explained that its analysis did rely on methods associated with the IRP forecast. *Id.*

We appreciate the Company’s IRP-based analysis and its openness to working with Staff to understand its concerns. However, we find that traditional principles of [cost of service] and avoided cost based on historical data and approved by the Commission provide a reasonable and proven framework for analyzing the pricing and compensation structure under the Micron ESA and other CEYW – CO projects. As the Company collects additional data from these types of projects, we anticipate the Company working with Staff to refine a no-harm analysis that supports a fair and mutually agreeable pricing and compensation structure.

Order No. 35482 at 15. The Commission did not examine the assumptions or the values used for the risk variables and did not find they were unreasonable. The Commission did not find any actual fault with the Integrated Resource Plan (“IRP”) based analysis, which is forward-looking and relies

on model runs of future scenarios. The Commission's rejection of the No-Harm Analysis appears to be a pretext to impose its own pricing.

The only evidence available in the decision-making record suggests the Micron ESA would result in a \$4.1 million benefit to other ratepayers. Commission Staff Comments state,

The Company compared the net present value results of Aurora production cost model runs both with and without the [Micron ESA] with the Black Mesa PPA. The results of the Company's analysis show that the system with the [Micron ESA] could provide a \$4.1 million benefit to customers over a 20-year period.

However, Staff believes the analysis is insufficient because the analysis relies on a single set of assumptions that could change over the life of the Micron 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.

Commission Staff Comments at 16 (citing Staff Production Request No. 1) for the \$4.1 million figure. From the publicly available information, it is unclear whether Staff requested the Company to run additional No-Harm Analyses that would comply with Staff's expectations. Commission Staff's 12 recommendations do not include a request for additional No-Harm Analysis. Commission Staff Comments at 20-22. Idaho Power's reply comments do not respond to any request for additional No-Harm Analysis, and in related passages where one would expect a response if the question was raised regarding the adequacy of the No-Harm Analysis, there is no mention. In its reply comments, Idaho Power states,

Idaho Power's economic analysis of Micron's ESA demonstrates there is no harm to Idaho Power's other customers, and in fact goes beyond 'no harm' and shows positive benefits to Idaho Power's other customers of \$4.1 million over a period of 20-years. Rather than protecting other customers from cost shifts, Idaho Power is concerned an additional adjustment to the excess energy component would increase the benefits other customers would receive at Micron's expense.

Idaho Power Company's Reply Comments at 10. While it may be possible that additional No-Harm Analysis is warranted, it is not fair to Micron, the Company, or other potential future CEYW-CO participants to announce a heightened standard after the record is closed, rely on the standard to reject the proposed pricing of the agreement, and not establish what the standard is.

After discarding the No-Harm Analysis despite no evidence on the record to suggest any harm to other ratepayers, the Commission imported pricing concepts from different regulatory schemes, namely the Public Utilities Regulatory Policy Act of 1978 ("PURPA") for avoided cost pricing. The Commission did not analyze the similarities and differences between CEYW-CO and PURPA that may or may not justify the use of the same terms in the different programs. Additionally, the Commission applied PURPA pricing components even more stringently than it does under PURPA. For example, the Commission imposed the "lower of" two market costs to determine the Excess Generation Credits.

The Commission did not apply its own No-Harm Analysis to determine if the resulting contract terms it imposed were fair, just, reasonable, and non-discriminatory. Nor could it apply its own No-Harm Analysis because there is no standard behind the No-Harm Analysis. The Commission instead deferred to Commission Staff and the Company to determine, at a later date, what a sufficient No-Harm Analysis would entail. The Commission merely assumed that because it imposed asymmetrical risk and reduced the economic value of participation on Micron and future CEYW-CO participants, the resulting contract terms meet its arbitrary threshold for holding other customers harmless over a sufficient number of future scenarios. While managing future risk is a worthy goal, doing so by putting excessive costs on specific participants without an analysis showing the adjustments mitigate harm to other customers is discriminatory.

III. The pricing components the Commission imposed are discriminatory.

If structured reasonably, the Micron and other future CEYW-CO agreements will provide unique benefits to the Company and other customers. The renewable energy projects are directly interconnected to the Company's system, operate as system resources, and can be brought online more quickly than other projects because of the financial risk assumed by the participating customer. The CEYW-CO agreements help mitigate risk for Idaho Power by guaranteeing a revenue stream to refund the specific investments and allow additional resources to be brought online without contributing to rate base. The CEYW-CO agreements allow companies to meet their climate and clean energy goals without having to leave Idaho Power's service territory and without forcing customers to purchase renewable energy or RECs from other sources that provide no benefit to Idaho's utilities, economy, or utility customers.

Despite the unique benefits associated with CEYW-CO agreements, the Commission's pricing components force Micron to unreasonably subsidize the system benefits provided by the Black Mesa solar energy resource. Each adjustment the Commission made to the pricing components negatively impacts the economic rationale to participate in the program. These discriminatory pricing adjustments are particularly unfair in the context of the \$4.1 million benefit to other ratepayers identified in the Company's No-Harm Analysis. The potential application of these pricing components to other future CEYW-CO agreements will negatively impact the economics of these agreements for other customers. These negative impacts will force customers to consider different approaches to achieve their clean energy goals.

a. Excess Generation Credits.

The Commission determined that CEYW-CO Excess Generation Credits should be "the lower of the Excess Generation Price (with the 85% adjustment) and the actual high or low load hour Mid-C market price (without any adjustment) for each hour of excess energy delivered."

Order No. 35482 at 15. The “Excess Generation Price” is defined by Commission Staff as “determined by taking the hourly Mid-C price forecast from the IRP, assumed to be a firm-energy market price, and then 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’ [PURPA Schedule – Schedule 86].” Staff Comments at 9. Staff goes on to explain, “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.” Staff Comments at 10.

Staff recommends using the lower of the two numbers because, “Using forecasted prices instead of actual market prices introduces a risk that could cause other customers to pay more than their avoided cost.” Staff Comments at 10. While it is true that market prices may end up being lower than assumed in the forecast, it is also true that market prices may end up being higher than assumed in the forecast. To require Micron, and other future CEYW-CO contracting parties to take the downside forecast risk without providing them the opportunity to receive the upside forecast risk is discriminatory.

b. Renewable Capacity Credit and the Renewable Capacity Credit Eligibility date.

The Commission replaced the Renewable Capacity Credit agreed upon by the parties and instead applied a method developed for energy storage projects under PURPA. Order No. 35482 at 17. The Commission ignores that the solar energy produced by the facility will serve system needs, either directly charging the adjacent battery, meeting system demand, or sold to produce net-benefit. The Commission confuses the billing mechanism determining excess generation with the actual energy output delivered by the Black Mesa solar resource. *See* Order No. 35482 at 16. While Micron’s electricity demand will exceed the 40 MW nameplate capacity from Black Mesa

in every hour, the capacity benefit as a system resource is consistently delivered, regardless of Micron's load.

The Commission determined the Renewable Capacity Credit Eligibility date ("RCCE date") should be "based on the first capacity deficiency date approved by the Commission at the time the PPA or a resource construction agreement is executed by the Company." Order No. 35482 at 16. As of the date of Order No. 35482, the capacity deficiency date was July 1, 2023. However, as of the date the Black Mesa PPA and the Micron ESA were signed, the capacity deficiency date was July 1, 2026. Thus, the RCCE date is not based on actual contribution of the resource to system capacity but is based on an outdated model run that has been superseded by a more recently acknowledged capacity deficiency date. Additionally, the PPA with the facility and the resource construction agreement with the CEYW-CO participant will likely occur on different dates, introducing additional uncertainty and discriminatory risk to the participants.

c. Power Cost Adjustment.

While Boise City agrees that the Company broadly has the responsibility to manage its overall power supply expense cost structure, the 95% cost sharing mechanism is discriminatorily applied to the excess energy and capacity credits in this situation. While the intent of the 95% cost sharing mechanism is to encourage the Company to minimize its power supply expense, the application of the cost sharing mechanism here does nothing to encourage the Company to mitigate its power supply expenses and instead passes back the cost to Micron or the future CEYW-CO participating customer by further reducing the value of excess energy and capacity credit costs. The Commission has the opportunity to review and approve each future CEYW-CO agreement, supporting PPA(s) and pricing elements, including the value of excess energy and capacity credits,


so it is not necessary to impose additional discriminatory costs to further increase the renewable resource benefits to non-participating customers through a cost-sharing mechanism.

IV. Conclusion.

In conclusion, the Commission exceeded its authority by arbitrarily dismissing the No-Harm Analysis with no evidence to support its decision. After dismissing the No-Harm Analysis that was presented, the Commission imposed discriminatory contract terms borrowed from a different context and applied more stringently. Each term imposed by the Commission negatively affects the economic rationale to participate in the CEYW-CO program and the cumulative result is to require CEYW-CO participants to unreasonably subsidize other ratepayers. The Commission merely assumed that the resulting terms it imposed would satisfy the No-Harm Analysis it relied on to invalidate the proposed terms. The Commission made these decisions in the improper docket. Without reconsideration, the Commission's decision will unfairly, unjustly, and unreasonably place undue burden on Micron and future customers who wish to meet their own demand with a dedicated clean energy resource.

For the above reasons, Boise City believes Order No. 35482 is unreasonable. If the Commission grants Boise City's petition for reconsideration, Boise City intends to present argument and evidence as to why the Commission's decisions in this docket were unfair, unreasonable, and discriminatory. Boise City requests reconsideration by written comments. Boise City is prepared to present oral argument if ordered by the Commission.

DATED this 22nd day of August 2022.



Ed Jewell,
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 22nd day of August 2022, served the foregoing documents on all parties of record as follows:

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