

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF IDAHO POWER ) CASE NO. IPC-E-22-06**  
**COMPANY’S APPLICATION FOR )**  
**APPROVAL OF A REPLACEMENT )**  
**SPECIAL CONTRACT WITH MICRON ) ORDER NO. 35532**  
**TECHNOLOGY, INC. AND A POWER )**  
**PURCHASE AGREEMENT WITH BLACK )**  
**MESA ENERGY, LLC )**  
**)**

---

On March 10, 2022, Idaho Power Company (“Company” or “Idaho Power”) applied to the Commission for an order approving the Revised Special Contract (“Micron ESA” or “ESA”) with Micron Technology, Inc. (“Micron”) and a power purchase agreement (“Black Mesa PPA” or “PPA”) with Black Mesa Energy, LLC (“Black Mesa”).

On April 6, 2022, the Commission issued a Notice of Application and Notice of Modified Procedure setting public comment and Company reply deadlines. Order No. 35367. Industrial Customers of Idaho Power Company (“ICIP”) intervened, Order No. 35406, but did not file comments. Staff filed comments to which the Company replied. No other comments were received.

On August 1, 2022, the Commission issued Order 35482, approving the Black Mesa PPA, as filed, but directing the Company to file an updated ESA and Schedule 26 addressing the Commission’s modifications.

On August 22, 2022, the city of Boise City (“Boise City”) filed a Petition for Reconsideration and a Petition to Intervene, and the Company filed a Petition for Clarification and Reconsideration.

Staff filed an Answer to Boise City’s and the Company’s petitions on August 29, 2022. With this Order, we grant the Company’s Petition for Clarification and Reconsideration and Boise City’s Petition to Intervene, and grant in part and deny in part Boise City’s Petition for Reconsideration.

**ORDER 35482**

The Commission approved the Black Mesa PPA, as filed. However, the Commission ordered the Company to make certain modifications to the treatment of excess generation credit(s) (“EGC(s)”) and renewable capacity credit/s (“RCC(s)”) under the Micron ESA. In addition, the

Commission found “it fair, just, and reasonable that the credits for excess energy and capacity included in power supply expense be subject to 95% sharing in the [Power Cost Adjustment (“PCA”).” Order No. 35482 at 18. The Commission ordered the Company to file an updated ESA and Schedule 26 addressing the Commission’s modifications by October 30, 2022.

## **COMPANY’S PETITION**

### **A. Clarification**

The Company requested clarification on one issue: how to calculate the RCCs for Micron under the ESA. Specifically, the Company requested the Commission clarify whether it intended the Company modify just how RCC payments will be made or whether it intended the Company modify both the RCC calculation and the method for determining the Capacity Contribution Factor (“CCF”). The Company pointed to the Commission’s directive that the RCC utilize the rate and payment structure for Public Utility Regulatory Policies Act of 1978 (“PURPA”) Integrated Resource (“IRP”)-based energy storage projects. Company’s Petition at 2. The Company had proposed that the rate structure for the RCC be based on the capacity contribution of all variable energy limited resources in the Company’s 2021 IRP. Company Reply Comments at 12. The Company mentioned that to calculate the RCC, it was necessary to determine the CCF. However, the Company noted that both Staff and the Commission were silent on the method for determining the CCF.

The Company represented that it had a discussion with Staff on August 17, 2022, regarding the Commission’s modifications to the RCC. As a result of this discussion, the Company stated its belief that the Commission intended that Micron’s RCC would “be paid on a dollars-per-kWh basis for energy delivered in peak and premium peak hours as identified by the PURPA IRP-based storage project methodology.” Company’s Petition at 3. The Company requested that, if it is mistaken about how the Commission wished RCC payments to be calculated, the Commission issue clarification on this issue.

### **B. Reconsideration**

The Company also requested the Commission reconsider its finding that EGCs and RCCs included in the Company’s power supply expenses be subject to 95% sharing in the PCA. The Company argued that it had “no control over the two components that comprise excess energy payments: excess energy volumes and market prices at the time excess energy occurs.” *Id.* at 4.

The Company further argued that applying a 95% sharing provision resulted in the Company either under-recovering 5% of the excess energy payments or Micron only being “compensated for 95% of the market-based value of its excess generation.” *Id.* at 5. The Company made the final argument that in all other cases where the Company established pricing or compensation based on avoided cost, the Company was permitted to collect 100% of the costs from all customers.

## **BOISE CITY PETITIONS**

### **A. Reconsideration**

Boise City argued that the Commission violated Boise City’s due process rights in Order No. 35482 by improperly making “programmatic decisions” to the Clean Energy Your Way Construction Option program (“CEYW – CO”)—the subject of Case No. IPC-E-21-40—without adequate notice. Boise City Petition for Reconsideration at 2. Boise City also argued that, based on the record, the Commission lacked adequate justification for disregarding the pricing structure of the ESA negotiated by Micron and the Company and imposing its own pricing structure. Last, Boise City argued that the Commission imposed discriminatory pricing components through the modifications it ordered the parties to make to their ESA.

### **B. Intervention**

Boise City explained that, as a large Idaho Power customer with Schedule 7, 9, and 19 electric service accounts and multiple solar panel installations and net metering facilities, it had a direct and substantial interest in the proceeding and would not unduly broaden the issues if it were granted intervention.

Boise City’s Petition to Intervene was untimely. Boise City explained that it did not intervene in this case because it did not have reason to believe that programmatic changes to the CEYW-CO would occur in this case rather than Case No. IPC-E-21-40. Boise City further explained that it would be deprived due process and the opportunity to appeal an adverse decision on reconsideration if its Petition to Intervene was not granted. No party opposed Boise City’s Petition to Intervene.

## **STAFF’S ANSWER**

### **A. Response to Idaho Power**

Staff generally agreed with the Company’s representations regarding Staff’s position on determining the CCF and application of a “time of output” rate structure for payments for the RCC.

Staff Answer at 3. Staff also agreed with the Company’s statement that the annual value of Micron’s RCC would be “paid on a dollars-per-kWh basis for energy delivered in peak and premium peak hours as identified by the PURPA IRP-based storage project methodology.” *Id.*

Staff acknowledged that it did not consider the specific calculations of the RCC rates and the determination of the CCF. Staff understood that the PURPA energy storage payment structure—the structure which Staff recommended the Company implement—departed from previous PURPA rate structures when it was initially developed in Case No. IPC-E-20-02. Staff noted that the “hallmark” of this rate payment structure is its pricing for production delivered during “peak” and “premium peak hours.” *Id.* at 3. Staff asserted that peak and premium peak hours are, essentially, the hours that define the need for future capacity on the Company's system. *Id.* Staff reasoned that “since the energy storage payment structure was implemented, new methods in the IRP process for determining the amount of capacity resources can contribute to the system and identifying critical times of need have been developed.” *Id.* Staff stated the RCC rate structure it was recommending is “a synthesis of the new information and methods developed in the Company’s most recent IRP with the methods for determining the PURPA energy storage capacity rate structure.” *Id.*

Staff noted this approach required integration with the updated IRP methods and information. Thus, Staff recommended that the Company work with Staff to develop an RCC rate structure which it could then provide to the Commission as a compliance filing in this case.

Regarding sharing under the PCA, Staff believed the record, including Staff’s comments, supported the Commission’s finding that credits for excess energy and capacity included in power supply expenses be subject to 95% sharing in the PCA. However, Staff was willing to submit further written comments on this issue.

**B. Response to Boise City**

Staff did not reply to Boise City’s assertion that the Commission improperly made changes to the CEYW – CO program in this docket. Staff reiterated its position that the Company’s No-Harm Analysis was insufficient. Staff maintained its belief that the pricing components the Commission directed the parties implement under the Micron ESA were fair and reasonable. However, Staff stated it was prepared to file additional comments should the Commission grant reconsideration of the issues raised by Boise City’s Petition for Reconsideration.

## COMMISSION FINDINGS AND DECISION

### A. Legal Standards

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by reviewing the existing record, by written briefs, or by evidentiary hearing. IDAPA 31.01.01.311.03. Once a petition is filed, the Commission must issue an order saying whether it will reconsider the parts of the order at issue and, if reconsideration is granted, how the matter will be reconsidered. *Idaho Code* § 61-626(2). If reconsideration is granted, the Commission must conclude its reconsideration of the matter, including any hearings, comments, or interrogatories, within 13 weeks and 21 days from the service date of the order being reconsidered. *Id.* Once the matter is fully submitted for reconsideration, the Commission must issue its final order upon reconsideration within 28 days. *Id.*

Consistent with the purpose of reconsideration, the Commission's Rules of Procedure require that petitions for reconsideration "set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law." Rule 331.01, IDAPA 31.01.01.331.01. Rule 331 further requires that the petitioner provide a "statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." *Id.* A petition must state whether reconsideration should be conducted by "evidentiary hearing, written briefs, comments, or interrogatories." IDAPA 31.01.01.331.03. Grounds for reconsideration or issues on reconsideration that are not supported by specific explanations may be dismissed. IDAPA 31.01.01.332.

Rule 73 of the Commission's Rules of Procedure provides in pertinent part that:

[P]etitions to intervene must be filed at least fourteen (14) days before (1) the deadline for filing initial comments, if the case is being processed by modified procedure . . . . Petitions not timely filed must state a substantial reason for delay. The Commission may deny or conditionally grant untimely petitions for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or unduly broadening the issues, or for other reasons.

IDAPA 31.01.01.73.

Rule 74 of the Commission’s Rules of Procedure provides in pertinent part that: “[i]f a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the Commission or the presiding officer will grant intervention, subject to reasonable conditions.” IDAPA 31.01.01.74.

**B. The Company’s Petition**

*i. Clarification*

The Company requests clarification on the calculation of RCCs under the ESA.

Based on its recitation in its Petition for Clarification, the Company’s method for calculating the RCC appears to be correct and aligned with our directive in Order No. 35482. We note Staff’s representation that it generally agrees with the Company’s articulation of the standard for calculating the RCC. Staff recommended that it and the Company work together to develop an “RCC rate structure which it could then provide to the Commission as a compliance filing in this case.” Staff’s Answer at 3.

The method of calculating the RCC we directed the Company to use in Order No. 35482 departs from traditional IRP-based methodologies and incorporates new methods developed from the most recent IRP. Thus, we believe it would be beneficial for the Company and Staff to work together to develop a rate structure for calculating Micron’s RCC under the ESA which the Company can then file as a compliance filing in this case. This will confirm that the Company has fully implemented and understood our intent for the treatment of RCCs under the ESA.

*ii. Reconsideration*

The Company requests that the Commission reconsider its directive that excess energy and capacity payment included in power supply expenses be subject to 95% sharing in the PCA. Staff believes the existing record supports the Commission’s determination in this regard but states its willingness to supplement the record if the Commission wishes to reconsider this issue.

We find that reconsidering this issue would be beneficial as it would allow Staff, Boise City, and the Company to augment the record with written comments expressing support or opposition to the application of the 95% sharing mechanism under the PCA to excess energy payments. Staff shall have until October 18, 2022, to file written comments, associated documents, affidavits, and relevant evidence, if necessary, supporting its position on this issue. The Company and Boise City shall have until October 28, 2022, to file a reply, associated documents, affidavits, and relevant evidence.

### **C. Boise City's Petition for Reconsideration**

Boise City argues that the Commission violated its due process rights in this case because it made decisions affecting the entire CEYW-CO program without notifying affected parties. Specifically, Boise City argues that the “fundamental holding” in Order No. 35482 is that the Commission will *analyze* the Micron ESA and other CEYW-CO projects based on traditional principles and historical data. Boise City Petition for Reconsideration at 2. Boise City further argues that the Commission’s statements that its capacity findings in this case will “create methodological consistency between CEYW – CO projects” and that it will review every CEYW – CO project PPA individually, constitute a deprivation of due process for other CEYW – CO project participants. *Id.* at 2-3. We decline to reconsider this issue.

It is important to distinguish findings from the rationale and analysis used to support them. Although the Commission may analyze contracts under the CEYW – CO program using cost of service (“COS”) principles and historical data, this does not foreclose the Commission from using additional criteria or principles in its analysis of other CEYW – CO contracts. In addition, the argument that the Commission deprived other CEYW – CO participants of due process because it identified an analysis in this case that could be consistently applied to other similar cases conflates the process with actual results—applying a consistent analysis should not be construed to dictate the same outcome in every case.

Every ESA and PPA under the CEYW – CO program will be reviewed individually. If, based on the facts of the particular case, it appears that contract terms negotiated by the Company and the CEYW – CO customer are reasonable and satisfy the necessary criteria, then those terms will be accepted. Nothing in Order No. 35482 proscribes the Company or its customer from proposing that the Commission review and analyze its contract in a certain way in future CEYW – CO cases. We do not anticipate this is a one-size fits all program. Last, as set forth in greater detail in our discussion regarding Boise City’s Petition to Intervene, a cursory review of the filings that were publicly available in this case would have provided some indication that the decisions made in this case were related to Case No. IPC-E-21-40.

Boise City next argues the record did not support the Commission disregarding the Company’s own No-Harm Analysis and implementing a framework based on traditional principles of COS and avoided cost based on historical data. The record demonstrates that the No-Harm analysis was insufficient because it relied on a single set of assumptions that could change over

the life of the Micron ESA. 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.” *Id.* at 3. The Company explained that its analysis did rely on methods associated with the IRP forecast. *Id.* In Order No. 35482 we found 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. The Commission also noted that it anticipated the Company working with Staff to refine a no-harm analysis that supports a fair and mutually agreeable pricing and compensation structure. The Commission finds the record in this case supports its previous finding in Order No. 35482 that the Company’s No-Harm analysis was speculative when compared to proven principles and historic data and did not provide a sufficient basis for imposing certain price components under the ESA. Based on the forgoing, we decline to reconsider this issue.

Boise City next argues that the method for calculating EGCs would have a discriminatory effect on other CEYW-CO customers. Although the Commission does not find that Order No. 35482 has any discriminatory effect, we find it would be beneficial to supplement the record with additional information and arguments in support and opposition to applying this method. Staff shall have until October 18, 2022, to file written comments, associated documents, affidavits, and relevant evidence, if necessary, supporting its position on this issue. Boise City shall have until October 28, 2022, to file a reply, associated documents, affidavits, and relevant evidence.

Finally, Boise City makes the additional arguments that the Commission improperly applied the method used for energy storage projects under PURPA to determine the RCC amount and applied an arbitrary and superseded model in establishing the RCC eligibility date (“RCCE”) in the Micron ESA. Boise City also argued that the 95% sharing mechanism under the PCA is discriminatorily applied—an issue we already addressed in considering the Company’s Petition.

As we articulated in Order No. 35482 and this Order, the Company’s No-Harm analysis was insufficient. Accordingly, we considered a proven, and reasonable method for calculating the RCC. We are not persuaded by Boise City’s argument that the PURPA energy storage method deprives Micron of the capacity benefit the Black Mesa energy resource will deliver to the system. Rather, we believe that the energy storage method is the best way, so far, to calculate the capacity benefit a resource like the Black Mesa project delivers to the system. Under this method, resources are compensated for the energy they actually deliver to the system. We believe the record in this



case is sufficient to support our method of calculating the RCC under the Micron ESA, so we decline to grant reconsideration on this issue.

In determining the RCCE date, we applied the method we use for PURPA that is consistent with principles of avoided cost and previous Commission practices. We note, as we previously stated, that the Company did reconsider this issue. Contrary to Boise City's assertion, we do not believe that establishing an RCCE date for the Micron ESA based on the first capacity deficiency date in the most recently acknowledged IRP at the time the PPA is signed is arbitrary or adds additional uncertainty. We also note that the Company did not include the Black Mesa resource as a resource to meet its capacity deficiency date. Based on the forgoing, we believe the record is sufficient to support our determination of the RCCE date for the Black Mesa resource, and we will not reconsider this issue.

#### **D. Boise City's Petition to Intervene**

We find that granting Boise City's Petition to Intervene be consistent with the requirements of Rules 71 through 73, IDAPA 31.01.01.71-31.01.0.73. However, we are skeptical of Boise City's claim that its Petition to Intervene was untimely because it was "not aware that decisions regarding the Clean Energy Your Way program, and specifically the Clean Energy Your Way - Construction Option would be made in this docket." Boise City's Petition to Intervene at 3. Boise City is a party in Case No. IPC-E-21-40 which concerns the entire suite of CEYW offerings, one of which is the CEYW – CO program.

A cursory review of the Company's Application in this case clearly sets forth the relationship between the Micron ESA within the entire CEYW – CO framework. For example, the Company stated that the "Micron ESA is consistent with and reflects the regulatory framework set forth in the Clean Energy Your Way - Construction option, as outlined in Idaho Power's recent Application with the Commission (Case No. IPC-E-21-40) to establish new clean energy offerings for customers under the Clean Energy Your Way Program." Company's Application at 3. The Company goes on to make additional references to the relation of the Micron ESA to the overarching CEYW – CO program framework.<sup>1</sup> The Company's Application and all pleadings (except for discovery) are on the Commission's website at

---

<sup>1</sup> See, e.g., Company's Application at 5 ("This treatment is fully consistent with the structure outlined in the Clean Energy Your Way - Construction option in Idaho Power's Case No. IPC-E-21-40"); and 7 ("Idaho Power completed a present-value revenue requirement analysis for two scenarios and evaluated the difference in incremental system resource and power supply cost from Micron's participation in the CEYW - Construction option . . .").

<https://puc.idaho.gov/case/Details/6826>. Either Boise City by possible omission did not review the Application or did so and chose previously not to intervene after being fully informed of the Company's Application in this case. While we do not believe that our order in this case will dictate the terms and conditions for every future CEYW – CO ESA, the claim that there was no reason to believe that decisions related to the CEYW – CO program would not be made in this docket are unfounded.

We are hesitant to grant intervention to a sophisticated party who could have intervened earlier and participated in this case by propounding discovery, making arguments, and developing a record and issues for the Commission to consider in its initial final order. Nonetheless, Boise City is a customer of Idaho Power who has represented it has an interest in the CEYW-CO program, no party opposed its late intervention in this case and this case involves new issues. Weighing all factors, the scale tips slightly in favor of granting Boise City's Petition to Intervene in this case. Granting Boise City intervention in this case will allow it to access discovery and additional information which may assuage its concern that certain pricing components under the Micron ESA will be applied deleteriously to the contracts the Company makes with Boise City under the CEYW – CO program. Boise City's input on the matters to be reviewed on reconsideration will also help to augment the record in this case. Additionally, because we have granted the Company's Petition for Reconsideration, we find that no party would be prejudiced by granting Boise City's Petition to Intervene.

### **ORDER**


IT IS HEREBY ORDERED that the Company's Petition for Clarification and Reconsideration is granted. The Commission's directive to the Company in Order No. 35482 to file an updated Micron ESA and Schedule 26 addressing the Commission's modifications by October 30, 2022, is stayed pending a final order on reconsideration in this case setting forth a new deadline. The Company and Staff shall work together to develop a rate structure for calculating Micron's RCC under the ESA which the Company shall file as a compliance filing in this case by December 13, 2022, or by another date set by Commission order.

IT IS FURTHER ORDERED that the Company's Petition for Reconsideration is granted. Staff shall have until October 18, 2022, to file written comments supporting its position on 95% sharing under the PCA. The Company and Boise City shall have until October 28, 2022, to file reply comments.

IT IS FURTHER ORDERED that Boise City's Petition to Intervene is granted.

IT IS FURTHER ORDERED that Boise City's Petition for Reconsideration is granted in part and denied in part. We will not reconsider our decision on the Company's No-Harm Analysis, and the calculation of the RCC and the RCCE date. Staff shall have until October 18, 2022, to file written comments supporting its position on the method for calculating EGCs under the Micron ESA and 95% sharing under the PCA. Boise City shall have until October 28, 2022, to file reply comments.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19<sup>th</sup> day of September 2022.



ERIC ANDERSON, PRESIDENT

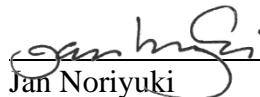


JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki  
Commission Secretary

I:\Legal\ELECTRIC\IPC-E-22-06 Micron Black Mesa\orders\IPCE2206\_interlocutory\_reconsider\_rm.docx