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** **ORDER NO. 35607**

On March 10, 2022, Idaho Power Company ("Company") applied ("Application") 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 "the 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 comment deadlines. Order No. 35367. Industrial Customers of Idaho Power Company were granted intervention, Order No. 35406, but did not file comments. Staff of the Idaho Public Utilities Commission ("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 to certain terms of the ESA.

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 the petitions on August 29, 2022. On September 19, 2022, the Commission granted the Company's Petition for Clarification[1] and Reconsideration ("Company's Petition") and Boise City's Petition to Intervene. Order No. 35532. The Commission also granted, in part, Boise City's Petition for Reconsideration ("Boise City's Petition"). *Id*. The Commission set deadlines for Staff to file comments on reconsideration and for the Company and Boise City to

[1]In granting the Company's Petition for Clarification, the Commission stayed the directive in Order No. 35482 requiring the Company to file an updated Micron ESA and Schedule 26 by October 30, 2022, and ordered the Company and Staff to "work to 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." Order No. 35532 at 10.

file reply comments on reconsideration. *Id.* Staff, Boise City, and the Company timely filed comments. With this Order, we affirm our previous determinations regarding both the treatment of Renewable Capacity Credit(s) ("RCCs") and Excess Generation Credit(s) ("EGC") under the Power Cost Adjustment ("PCA") and the calculation of EGCs under the Micron ESA as discussed below.

BACKGROUND

ORDER NO. 35482

As stated in Order No. 35482, Micron, as a large power customer receiving in excess of 20 Megawatts ("MW") under Schedule 19, is required to make special contract arrangements with the Company. Order No. 35482 at 1. Under the Micron ESA, the Company would procure an "'initial Renewable Resource of 40 MW on behalf of—and to be paid for by—Micron.'" *Id.* at 1-2 (quoting the Application at 3). As further outlined in Order No. 35482:

> The Company . . . represented that the ESA is consistent with and reflects the regulatory framework set forth in the Clean Energy Your Way – Construction Option ("CEYW – CO") program for which approval is still pending in Case No. IPC-E-21-40.
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> The Company explained that under the CEYW – CO, future and existing special contract customers could work with the Company to develop a 'Renewable Construction Agreement' which would control "all pricing for Company electric service and the customer's accompanying renewables." The Company further explained that the Renewable Construction Agreement was incorporated into the Micron ESA.
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> The Company stated that the ESA 'envisions an initial Renewable Resource—the Black Mesa project—and provides flexibility for the [Company] to work with Micron to develop additional [r]enewable [r]esources in the [Company's] service area . . . .' The Black Mesa project and additional renewable resources will not serve Micron directly but will be connected to the Company's transmission system. Micron will pay for the renewable output at the PPA contract rate and will also be credited for any value the renewable resources bring to the Company's system.
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> The Company represented that "[u]nder the terms of the Black Mesa PPA, Black Mesa will build, own, operate, and maintain a 40 . . . [MW] alternating current ("AC") solar photovoltaic generation facility ("Renewable Resource") and will supply the output to the [Company's system]." The Company represented that all costs associated with the Black Mesa PPA would be paid for by Micron. The [Black Mesa PPA] has a scheduled operation date of June 1, 2023.

Order No. 35482 at 2. (internal citations omitted).

The Commission approved the Black Mesa PPA, as filed. However, the Commission ordered the Company to make certain modifications to the method for valuing EGCs and RCCs

under the Micron ESA. Order No. 35482 at 15-17. 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 PCA." Order No. 35482 at 18.[2]

PETITIONS TO RECONSIDER

Both the Company and Boise City requested the Commission reconsider its decision to implement a 95% sharing requirement within the PCA for EGCs and RCCs under the Micron ESA. Company's Petition at 3-6; Boise City's Petition at 8.

Boise City also argued the Commission violated other CEYW – CO participants' due process rights by making programmatic changes to the entire CEYW – CO program in this case without adequate notification. Boise City's Petition at 2-3. Boise City further 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. *Id.* at 3. Boise City contended that the Commission unduly discriminated in utilizing its own price structure for calculating the EGCs, RCCs and the RCC Eligibility date under the ESA. *Id.* at 5-8. In sum, Boise City averred that, "[w]ithout 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." *Id.* at 9.

ORDER NO. 35532

In its order on reconsideration, the Commission determined that reconsidering "its directive that excess energy and capacity payment[s] included in power supply expenses be subject to 95% sharing in the PCA . . . would be beneficial" because it would allow Boise City, Staff, and the Company to further augment the record with written comments, associated documents, affidavits, and relevant evidence. Order No. 35532 at 6.

The Commission declined to reconsider the issues raised by Boise City's Petition relating to potential due process violations, the Company's no-harm analysis, and the calculation of the RCC value and the RCC eligibility date, but determined it would be beneficial to supplement the

[2] In Order No. 35482 the Commission also found that the Renewable Capacity Credit ("RCC") Eligibility "date for future Micron renewable resources" and the 40-Megawatt Black Mesa solar project "was to 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." *Id.* at 16. The Commission also directed the Renewable Capacity Credit "utilize the rate and payment structure for Integrated Resource Plan-based energy storage projects. *Id.* at 17. Last, the Commission found that every CEYW – CO and associated PPA or resource construction agreement be individually reviewed for Commission approval. *Id.* at 17-18. These findings remain in full force and effect.

record by considering additional information and arguments in support of or in opposition to the method approved by the Commission for calculating the value of EGCs under the ESA. Order No. 35532 at 11.

COMMENTS ON RECONSIDERATION

Staff

Staff maintained that payments for EGCs and RCCs should be subject to 95% sharing in the PCA. Staff believed that subjecting these payments to 95% sharing incentivizes the Company to negotiate for the lowest cost when negotiating rates for EGCs and RCCs under an ESA.

Staff also maintained its position that the Commission's "backstop mechanism," whereby the EGC is "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," was necessary to mitigate market price risk. Staff's Reconsideration Comments at 6-7. Staff's position on these issues are further examined below.

1. 95% Sharing

Staff noted that the purpose of the PCA is to "'true-up the amount of [Net Power Supply Expenses] [(")]NPSE[(")] recovered through base rates to actual NPSE." *Id.* at 3. Through the PCA, the Company can annually charge customers for actual NPSE greater than the amount recovered through base rates or, if actual NPSE is lower, issue a credit to customers. However, the Company is incentivized to lower its actual NPSE due to 95%/5% customer sharing in the PCA. The sharing mechanism under the PCA allows the Company to keep 5% of the credit to customers if actual NPSE is lower than the amount collected through base rates. On the other hand, if actual NPSE is higher than the amount collected through base rates, the Company is only allowed to collect 95% of a surcharge to customers. The Company is not subject to 95%/5% sharing for a limited number of cost components in the PCA, for which it can collect 100% pass-through of actual cost to its customers. For sharing to work as an incentive to reduce costs, Staff believed as many components of NPSE as possible should be subject to sharing in the PCA.

Staff noted the only NPSE components of the PCA that are not subject to sharing are Public Utility Regulatory Policies Act of 1978 ("PURPA") PPA payments, demand response ("DR") incentive payments, and energy efficiency ("EE") payments. *Id.* The amount of these payments is based on avoided cost which is, as Staff notes, set by regulatory policy. Because of this, the Company and the party with whom it is negotiating have no opportunity to negotiate the rates the Company pays.

Power expenses subject to sharing include fuel costs, transmission costs, and non-PURPA PPAs which, unlike PURPA, DR incentive, and EE payments, have no set rate determined by regulatory policy. Staff believed that subjecting these power expenses (fuel costs, transmission costs, and non-PURPA PPAs) to sharing incentivizes the Company to reduce costs by negotiating or otherwise ensuring the lowest rates. Staff contended that the Company was mistaken in its belief that the Commission ordered the EGC and RCC rates to be based on avoided costs in every case, as a matter of policy. *Id.* at 4. Staff pointed to the Commission's statements that the rates for CEYW – CO projects "are freely negotiated by the Company with its customers," and that "applying a consistent analysis" in analyzing the EGC and RCC rates does not necessarily dictate the same outcome in every case. *Id.*

Staff pointed out that Micron had the potential to generate a significant amount of excess generation which the Company would purchase under the Micron ESA. Staff argued that if NPSE incurred from freely negotiated contracts, such as the Micron ESA, continue to increase, "it is important that compensation for excess generation be subject to PCA sharing so the Company is motivated to negotiate these contracts at least cost." *Id.* at 4-5.

Staff likened the situation of Micron's exporting generation into the Company's system to the situation of a non-PURPA supplier exporting power. *Id.* at 5. When negotiating to buy power from a non-PURPA supplier, Staff claimed the Company is motivated to negotiate the best rates for customers because this expense will be subject to sharing. Staff believed that subjecting EGC and RCC payments to sharing under the Micron ESA would similarly ensure the Company is motivated to negotiate in the best interest of all its customers. *Id.*

Staff made several points in response to Boise City's arguments in its Petition concerning the 95%/5% sharing. First, Staff noted that the Company is required to obtain Commission approval to recover the costs incurred from non-PURPA PPAs. Second, Staff believed that requiring sharing motivates the Company to "achieve the best deal for all customers" while negotiating rates, and prior to recovery. *Id.* at 6. Last, Staff argued that the Commission does not guarantee rates must be set to ensure a project's financial viability or its owner is able to earn a return on investment. Staff contended that the Company and Micron are free to negotiate a rate that takes into consideration each party's relative costs and benefits.

Based on the forgoing, Staff continued to recommend that 95%/5% sharing be applied to all EGC and RCC payments under the Micron ESA.

2. Method for EGC

Staff noted Boise City's argument that the Commission's approved method for calculating the EGC under the Micron ESA precludes Micron and other potential customers from receiving a greater payment if the actual market price was higher than the Excess Generation Price. *Id.* at 6-7. In Order No. 35482, the Commission determined that the EGC rate under the Micron ESA 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 Company proposed that the price paid for excess generation under the Micron ESA would be the Mid-C price forecast from the Company's most recently acknowledged Integrated Resource Plan ("IRP"), with an 82.4% non-firm adjustment consistent with the Company's Schedule 86. Aschenbrenner Direct at 16-17. Staff recommended that the Company's "forecast price" (with the 82.4% non-firm adjustment) be adjusted an additional 85% to adjust for transmission losses, and transaction costs inherent in transporting non-firm energy to the market. Staff Comments at 10. Staff further recommended that the value of the EGC be the lower of the twice adjusted IRP forecast price or the actual high or low load hour Mid-C market price. In short, under this method, which was ultimately approved by the Commission, if the IRP Mid-C forecast price with the 85% and 82.4% adjustment is higher than the actual market price for a given hour, Micron will be compensated at the actual market rate.

Staff believed that this method of "backstopping" the EGC with actual market price rates, mitigates the risks from an erroneous forecast and a "fundamental change in market prices between forecast updates." *Id.* at 7. Staff performed an analysis and determined that, based on 2019 data, the forecasted price was higher than the unadjusted market price less than 10% that year "(819 hours out of 8760 hours)." *Id.* Staff also believed that this mechanism balances Micron's need for predictability in determining revenue and the need to protect other customers from risk. *Id.*

Based on the forgoing reasons, Staff continued to recommend that EGC value be the lower of the twice adjusted forecast price or the actual high or low load hour Mid-C market price.

The Company

The Company argued that subjecting RCC and EGC payments to sharing under the PCA "*may*" have the effect of CEYW participants subsidizing power supply expenses. Company Reply Comments on Reconsideration at 2 (italics added). The Company pointed out that "EGC and RCC valuation is self-adjusting for future additional CEYW resources." *Id.* at 6 (capitalization omitted). The Company argued that implementing sharing could potentially introduce "magnifying circular

mechanics." *Id.* at 8 (capitalization omitted). Finally, the Company argued that the method for calculating the EGC "unfairly applies asymmetrical risk to Micron." *Id.* at 9 (capitalizations omitted).

1. Subsidization

The Company pointed out that Micron is delivering a benefit under the ESA by paying for 100% of the output of the Black Mesa resource *Id.* at 2. The Company argued that this benefits customers because it has the potential to avoid or defer costs that can incur from the Company acquiring more-costly resources. The Company averred that once the Commission determines that pricing under the Micron ESA is fair, just, and reasonable, "it is inappropriate to subsequently apply an additional discount factor in the form of the PCA sharing percentage to further lower the compensation cost." *Id.* at 3-4.

In response to Staff's argument that sharing motivated the Company to negotiate the lowest rate, the Company stated that sharing actually motivates it to not engage in CEYW – CO transactions at all or reduce the value of the EGC and RCC payments towards zero. *Id.* at 4. The Company questioned why—if the terms of the ESA are reviewed to ensure fairness and have already been set at avoided cost—it is necessary to apply an arbitrary reduction of 5% which operates as a subsidy to other customers provided by Micron. *Id.* at 4. The Company also contended that Staff's position on reconsideration that the Commission should establish "least-cost" pricing is inconsistent with Staff's prior comments that the Commission should establish "neutral pricing." *Id.* at 5. Finally, the Company argued that the Commission ultimately set the rate for the EGC and RCC payments under the Micron ESA, the same payments for which Staff claims were "freely negotiated," and that the rate at which the Commission set the EGC and RCC in this case—avoided cost—is the same rate in PURPA, DR and EE incentive payments—payments that are recovered in their entirety by the Company from all customers.

2. Self-Adjusting

Next, the Company addressed Staff's concern that as Micron and other CEYW customers acquire additional renewables, net exports from these resources will become a large proportion of the Company's NPSE. The Company stated that "[t]he existing Micron ESA terms for EGC and RCC payments are already self-adjusting for potential future renewable resource additions and how they impact Idaho Power's power supply expense." *Id.* at 6. In support of this conclusion, the Company stated that the RCC value is based on the most recently acknowledged capacity deficiency date and the surrogate resource value. The Company contended that basing the RCC

value on these criteria ensures that the capacity value that Micron's resources receive matches the value it provides to the Company's system. *Id.* at 7.

In addition, the Company noted that the value of the EGC is based either on the biennial IRP forecast or "an actual market price which adjusts to real-time market dynamics." *Id.* at 7. This ensures that, as the Company argues, any excess energy from either Micron's resources or the Company's lower-cost resources can be sold in the market at a value that fairly compensates both Micron and the Company's customers. *See id.* at 7.

3. Circular mechanics

The Company assumed Staff's recommendation regarding sharing under the PCA for the EGC and the RCC contemplated either: "1) EGC and RCC compensation . . . to be reduced by percent, which the Company would pass on to Micron, or 2) any EGC and RCC payments are always only to be recoverable at only 95 percent of the compensation amount." *Id.* at 8. The Company contended that the "second approach has the potential to introduce a circular calculation where the EGC and RCC amounts are reduced by 5% in perpetuity." *Id.* The Company stated that, under the first approach, it will modify the ESA to reduce compensation to Micron by 5%. The Company stated that under the second approach it would "seek to only pass through to Micron what is recoverable through the PCA, but regardless of the amount the Company included for recovery through the PCA, under Staff's recommendation, that amount would be subject to a further 5 percent reduction." *Id.* Ultimately, the Company stated the Commission must consider what the goal is in effectuating Staff's recommendation—whether it is to reduce the payments for the RCC and EGC by 5% or introduce a "financial penalty" to the Company for facilitating "CEYW transactions." *Id.* at 8-9.

4. Calculating the EGC

Finally, the Company reiterated the position in its previous comments that introducing the "lower-of" concept in calculating the EGC value introduces unfair asymmetrical risk to Micron. *See id.* at 9.

Boise City

Boise City maintained its argument that 95% cost sharing was unnecessary to protect customers and did not incentivize the Company to negotiate the least cost, and unduly burdens Micron. Boise City further maintained its argument that Staff's imposition of the "backstop" mechanism in determining the EGCs was discriminatory and resulted in unreasonable rates.

1. Sharing under the PCA

Boise City supported Staff's position that 95% sharing should be applied to non-PURPA PPAs to incentivize the Company to "achieve the best deal for customers," but argued that the structure of the Micron ESA was fundamentally different from the structure of a non-PURPA PPA such that the 95% cost-sharing was unnecessary. Boise City Reconsideration Reply Comments at 2. Boise City argued that Micron and other CEYW – CO participants should not be likened to "suppliers" because CEYW – CO participants do not procure resources nor are they responsible for the operation and maintenance or any other aspect of electricity generation. Boise City argued that Micron had no contractual relationship with the Black Mesa project and therefore lacked any choice in how the Black Mesa solar project—a system resource—was managed or initially negotiated. Ultimately, Boise City argued that Micron was properly characterized as a "guarantor" of the project by assuming all risks and costs of all kilowatt hour output from the project. *Id.* at 3. Boise City argued that the Company must ensure that customers are held harmless to receive Commission approval of all future CEYW – CO project agreements, and that it has already been established that non-participating customers benefit under the terms of the Micron ESA. Thus, as Boise City argued, there was no justification for subjecting the RCC and EGC payments to sharing as this only results in the Company under-recovering or passing on additional costs to Micron. *Id.* at 4.

2. Determination of the EGC

Boise City maintained its position that the Commission's adoption of the "back stop" methodology in calculating the EGC was unreasonable. Boise City contended that Staff's analysis showing that the backstop mechanism comes into play less than 10% of the time, lent more support for the conclusion that it was unnecessary. *Id.* at 4. This backstop, Boise City contended, reduced economic incentive for customers to participate in the CEYW – CO offering, was discriminatory, and unnecessary to protect customers. *Id.* at 5.

Boise City stated that if Staff or the Commission believed that basing EGC payments on the "double discounted IRP forecast" alone was insufficient to protect customers, a reasonable alternative would be to compensate Micron at an actual market price framework or a "band approach where Micron would be compensated at the discounted market price forecast when it is within an acceptable range of actual market prices," or the "actual market price when the difference between the forecast is outside of the acceptable range . . . ." *Id.* at 5. In sum, Boise City contended

that the method approved by the Commission for valuing EGCs unjustly penalizes Micron and is unreasonable. *Id.*

FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-501, -502, and -503. *Idaho Code* § 61-501 authorizes the Commission to "supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the [Public Utilities Law]." *Idaho Code* §§ 61-502 and -503 empower the Commission 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. Pursuant to its statutory duties, the Commission has the authority to determine reasonable rates and review and investigate contracts. *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 192, 755 P.2d 1229, 1230 (1987).

Reconsideration affords parties an opportunity to bring to the Commission's attention any matter previously determined and provides the Commission opportunity to rectify any mistake before the matter is appealed to the Supreme Court. *Washington Water Power Co. v. Idaho Public Utilities Comm'n*, 1980, 101 Idaho 567, 617 P.2d 1242. Any person or public utility has the right to petition for reconsideration in respect to any matter determined in a Commission order. *Idaho Code* § 61-626(1). The Commission's order on reconsideration shall specify how a matter or matters will be reconsidered. *Idaho Code* § 61-626(2). "The matter must be reheard, or written briefs, comments or interrogatories must be filed, within thirteen (13) weeks after the date for filing petitions for reconsideration." *Id.* "If reconsideration is ordered, the [C]ommission must issue its order upon reconsideration within twenty-eight (28) days after the matter is finally submitted for reconsideration." *Id.*

The Commission has reviewed the entire record in this case, including the comments and arguments provided by Staff, the Company, and Boise City on reconsideration. This case is the first case in which the Commission has ruled on a contractual arrangement of this type. Based on our review and the contents of the record of this case, the evidence as a whole, given the circumstances, supports affirmation of our previous directives in Order No. 35482 regarding the treatment of RCCs and EGCs under the PCA and the calculation of EGCs under the Micron ESA. We also wish to state that the Company's proposed CEYW program, including the CEYW-CO component, is separate from this case, remains under review, and no final order has been issued approving, approving with modifications or rejecting the same. *See* Case No. IPC-E-21-40.

We note that Boise City relies on the Company's No-Harm analysis to justify it support for the contractual arrangements proposed by the Company's Application. The Commission reaffirms its previous findings in Order No. 35482 that the Company's No-Harm analysis was insufficiently robust when compared to proven principles and historic data and did not provide an adequate basis for imposing certain price components under the ESA. The Commission finds it would not be prudent to rely on this analysis without further inputs. In our previous order, we anticipated the Company would work with Staff going forward to refine a no-harm analysis that supports a fair and mutually agreeable pricing and compensation structure that can be presented to the Commission for its review. Order No. 35482 at 15. In addition, we directed the Company and Staff "to work together to develop a rate structure for calculating Micron's RCC under the ESA" then make a compliance filing." Order No. 35532 at 6. Thus, based on the record in this case, including our reasoning and conclusions in Order Nos. 35482 and 35532, we continue to decline to reconsider the issues argued by Boise City related to the RCC, and RCC eligibility date.

We also note Boise City's arguments that subjecting RCC and EGC payments to 95% sharing under the Micron ESA "would increase costs passed on to Micron" and that the method advocated by Staff for calculating the EGC "unjustifiably penalizes Micron and is not reasonable." Boise City Reconsideration Reply Comments at 4, 5. Many of Boise City's arguments seem to be that the terms of the ESA are unfair or discriminatory[3] because of potential harm Boise City alleges Micron will incur. *Id.* at 2, 4. Boise has not applied for Commission approval of a special contract. We take this opportunity to clarify that none of our decisions in this case should be taken as preventing Boise City (or any other customer) from negotiating for whatever EGC value it wants under its own future ESA with the Company as a potential special contract customer. Again, every special contract will be reviewed independently by the Commission and, if Boise City wishes to propose "a reasonable compensation framework," Boise City Reconsideration Reply Comments at 5, for valuing EGCs in a future ESA that departs from the method approved in this case, the Commission will consider it.

We reiterate our previous conclusion in this case that all contracts that have the potential to impact customers will be reviewed individually by the Commission. Order No. 35482 at 17-18.

[3] Boise City's argument that the terms of the ESA are *discriminatory* to Micron is unavailing in consideration of the principle that a special contract customer, like Micron, "is considered a separate class with different conditions and contract terms affecting their rates . . . ." Order No. 33038. The Commission "is not under a duty to set rates for different classes of customers which are either equal or uniform provided the rates set are just and reasonable." *Id.* (quoting *FMC Corp. v. Idaho Public Utilities Com'n*, 104 Idaho 265, 275,658 P.2d 936, 946 (1983)).

As such, based on our findings in this case, the Company and the individual customer with whom enters a special contract is currently free to propose any rates and pricing it wishes. If, based on the record before us, the Commission finds that the pricing under the contract negotiated by the Company and its customer has the potential to impact all customers, we may approve such contract under the rates and prices negotiated by the parties so long as these are fair and reasonable to *all* customers.

In this case, we decided, based on the record presented, that the EGC rate initially proposed by the parties under the Micron ESA could result in harm to customers. Order No. 35482 at 15. Accordingly, we found that adding the "lower-of" "backstop" mechanism whereby the value of EGCs would never exceed actual market prices, was a reasonable prophylactic measure to reduce unfair cost shifting to other customers. *Id.* This "backstop" approach was set forth in detail by Staff in its pleadings in this case as a means to protect all customers. We also note Staff's analysis demonstrating the infrequency of this backstop mechanism coming into play. Based on the foregoing, and the record established in this case, we affirm our previous findings that the backstop mechanism approved in Order No. 35482 is a fair, just, and reasonable method for calculating EGCs under the Micron ESA.

We also reaffirm our decision that EGCs and RCCs in the Micron ESA should be subject to 95% sharing under the PCA. In Order No. 35482, "we [found] that traditional principles of COS [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 . . . ." Order No. 35482 at 15. Considering the record before us, we determined that the resources under the Micron ESA and associated PPA, unlike resources under PURPA, the output of which the Company is mandated to take at a set price, were freely negotiated by the Company with its customer. *See* Order No. 35482 at 18.

It is true that the Company fully recovers its expenses under the PCA for purchases of energy at avoided cost rates under PURPA and the EE and DR incentive programs. However, the Company cannot choose whether to take energy under these programs and it cannot change the avoided cost rates for which it must pay as these are set as a matter of policy.

In this case, we found that principles of avoided cost provided a *threshold* in determining a reasonable EGC and RCC rate under the Micron ESA to ensure customers are not harmed. We did not determine that *all* special contracts, including the Micron ESA, under any other proposed program, or future program, should have excess generation and capacity rates based on avoided

cost as a matter of policy. Because there is no "fixed" method for determining rates under the Micron ESA, Micron and the Company are free to negotiate for whatever rates they wish, and the Commission will generally approve such rates provided they are fair, just, and reasonable to all customers. Although the Commission can certainly determine that rates under the Micron ESA for EGCs and RCCs (or any other non-PURPA PPA) are fair and reasonable, this does not constitute a determination that the Company's payments to Micron for EGCs and RCCs were the least cost. Requiring that payments for EGCs and RCCs be subject to sharing in the PCA under the Micron ESA incentivizes the Company to negotiate for the least-cost rates in these contractual arrangements for excess energy. This is a common treatment for all the Company's negotiated NPSE and we find no reason in this case to make an exception. Although it may be true that the Company must take the energy from the Black Mesa project, it negotiated the price at which it pays for this energy, and the Company was certainly free to decide to enter the ESA with Micron initially. As such, the Company and Micron were free to negotiate rates under the ESA that took into consideration each of the parties' relative costs and benefits.

As we have previously stated, all "[e]xpenses must be adjudged to be prudent and must be considered in a process that appropriately matches them with revenues."[4] Although "this process puts the Company at some business and financial risk, it is awarded a commensurate equity return."[5] Through this and other previous orders in this case, the Commission is authorizing recovery of EGCs and RCCs payments under the Micron ESA. When base rates are reset in the next general rate case, the inclusion of payments through this ESA provides the Company the opportunity to recover 100% of these expenses in subsequent PCA filings. The Commission finds it fair, just, and reasonable, and consistent with the treatment of all of the Company's other similar NPSE, to subject the EGCs and RCCs in the Micron ESA to 95%/5% under the PCA.

ORDER

IT IS HEREBY ORDERED that the Company's and Boise City's Petitions are denied.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.

[4] *In the Matter of Idaho Power's Petition for Modification of the Load Growth Adjustment Factor within the Power Cost Adjustment (PCA) Methodology*, Case No. IPC-E-06-08, Order No. 30215 (January 9, 2007).
[5] *Id.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 23rd day of November 2022.

ERIC ANDERSON, PRESIDENT

JOHN CHATBURN, COMMISSIONER

JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:

Jan Noriyuki
Commission Secretary

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