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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF IDAHO POWER</b>	)	
<b>COMPANY'S APPLICATION FOR</b>	)	<b>CASE NO. IPC-E-22-06</b>
<b>APPROVAL OF A REPLACEMENT SPECIAL</b>	)	
<b>CONTRACT WITH MICRON</b>	)	
<b>TECHNOLOGY, INC. AND A POWER</b>	)	<b>COMMENTS OF THE</b>
<b>PURCHASE AGREEMENT WITH BLACK</b>	)	<b>COMMISSION STAFF</b>
<b><u>MESA ENERGY, LLC</u></b>	)	

**STAFF OF** the Idaho Public Utilities Commission, by and through its Attorney of record, Riley Newton, Deputy Attorney General, submits the following comments.

**BACKGROUND**

On March 10, 2022, Idaho Power Company ("Company") applied to the Commission for an order: (1) approving a revised Special Contract ("Special Contract") for electric service between the Company and Micron Technology, Inc. ("Micron"); and (2) a 20-year Power Purchase Agreement ("PPA") between the Company and Black Mesa Energy, LLC ("Black Mesa") to facilitate the provision of energy to the Company under the Special Contract.

Micron, as a Large Power Service customer receiving in excess of 20 Megawatts ("MW") under Schedule 19, is required to make special contract arrangements with the Company.

The Special Contract is similar to the framework proposed in the Clean Energy Your Way – Construction ("CEYW-Construction") offering, as outlined in the Company's pending

Application in 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. Micron is the second customer proposing to take service under the framework of the CEYW-Construction option.

The Company and Micron have been operating under a special contract agreement that was replaced in 2009 (“Current Agreement”). Application at 2. The Company represents that the Special Contract is intended to replace the Current Agreement. *Id.* The Company represents that the Special Contract contemplates the Company procuring an “initial Renewable Resource of 40 MW on behalf of—and to be paid for by—Micron.” *Id.* at 3.

Under the terms of the twenty-year Black Mesa PPA, Black Mesa will build, own, operate, and maintain a 40 MW alternating current solar photovoltaic generation facility and will supply the output to the Company’s system. *Id.* at 2-3. The PPA has a scheduled operation date of June 1, 2023.

The Company requests a Commission order before August 1, 2022, approving the Special Contract, the PPA, modifications to Schedule 26 Electric Service Rate for Micron Technology, Inc., the derivation of the capacity credit associated with the Renewable Resources and compensation structure for excess renewable energy generation, authorization to treat bill credits provided to Micron under the proposed compensation structure as prudently incurred expenses for ratemaking purposes, and the Company’s proposed accounting treatment. *Id.* at 11.

## **STAFF REVIEW**

In reviewing the Company’s Application, Staff’s primary consideration was ensuring that customers would not be harmed by the Company’s proposal. After its review, Staff came to the following conclusions:

1. Rate Structure – The overall rate design framework provides a reasonable approach for payments to the Company for supplemental generation provided to Micron for electrical service and for credits to Micron for excess renewable generation exported from Micron’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 Price;<sup>1</sup>
- b. The Excess Generation Credit rate should be based on the lower of the Excess Generation Price (with the 85% adjustment) and actual high or low load hour Mid-C market price (without any adjustments) for each hour;
- c. The Renewable Capacity Credit Eligibility (“RCCE”) date for additional Micron renewable resources should be based on the PURPA first capacity deficiency date authorized on the date that the PPA or construction agreement is signed;
- d. The Renewable Capacity Credit should utilize the rate and payment structure for IRP-based energy storage projects (*See* Order No. 34913), which would provide Micron 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. 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

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<sup>1</sup> See Order No. 29093.

parallel with the IRP filing and the Commission can authorize the filing soon after IRP acknowledgment.

2. Company's No-Harm Analysis – The Company's No-Harm Analysis indicates the Micron contract will hold other customers harmless (cost shifts to customers other than Micron) 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 receive energy from Black Mesa Energy should ensure other customers are held harmless.
4. Renewable Energy Credit ("REC") Ownership – Micron should retain 100% of the RECs generated by its renewable resource(s). However, Staff believes a workshop is needed to determine the appropriate allocation for the value of system-generated RECs for all CEYW-Construction offering customers, including Micron.
5. Analysis of ESA Provisions - The provisions and guarantees in the ESA are sufficient to mitigate stranded-asset cost risk and Micron's financial ability to pay;
6. Supply Chain Investigation – There is a supply chain disruption in the Asian territories that may have a material impact to Black Mesa Energy meeting the June 1, 2023, operation date. Staff recommends that the parties notify the Commission of the following:
  - a. Supply Chain disruption updates;
  - b. Inability to meet the extended timeframe of November 28, 2023; and
  - c. When Force Majeure is being requested.
7. Accounting Treatment in the Power Cost Adjustment ("PCA") and the next General Rate Case – The Company did not propose treatment of Schedule 26 costs, revenues, and loads in the development of future base rates. To ensure timely processing of the next general rate case, Staff recommends the Company and Staff work together to scheduling a workshop to discuss the treatment of Schedule 26 costs, revenues, and loads.

8. Authorization of Renewable Resource PPAs by the Commission – The Company included the Black Mesa PPA while seeking blanket approval for future PPAs without Commission review of any signed PPA that will serve Micron.
  - 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 Micron and future CEYW-Construction projects, and (2) an annual Micron load forecast that is compared to Micron’s annual generation forecast for all signed PPA’s broken down on a monthly basis.

Additional details of Staff’s analysis and its rationale for its conclusions are provided in the following sections.

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

The Company has secured an initial 40 MW renewable resource through the Black Mesa PPA and plans to work with Micron to develop additional renewable resources to meet Micron’s renewable goals. As mentioned above, Staff focused its evaluation of the Special Contract on whether the structure of the deal, particularly the design of the rates, will prevent cost shifting to the Company’s other retail customers. This type of evaluation is especially critical for the following reasons:

1. The acquisition of Micron’s renewable resource(s) will be driven by Micron’s need to meet its load with renewable energy and not necessarily based on needs of the overall system;
2. The resource(s) will be connected to the system and will be used to serve system load as though it is a Company resource, but Micron will claim 100% of the environmental attributes (i.e. RECs), and will be paid 100% for the capacity contribution and for any excess energy from its renewable resources; and
3. Micron is one of the Company’s largest customers with a large impact to the Company’s system and cost structure, increasing the overall risk to customers.

A continuing Staff concern is the amount of excess energy from this and other CEYW-Construction projects. Although Staff believes excess energy should be priced at the Company’s

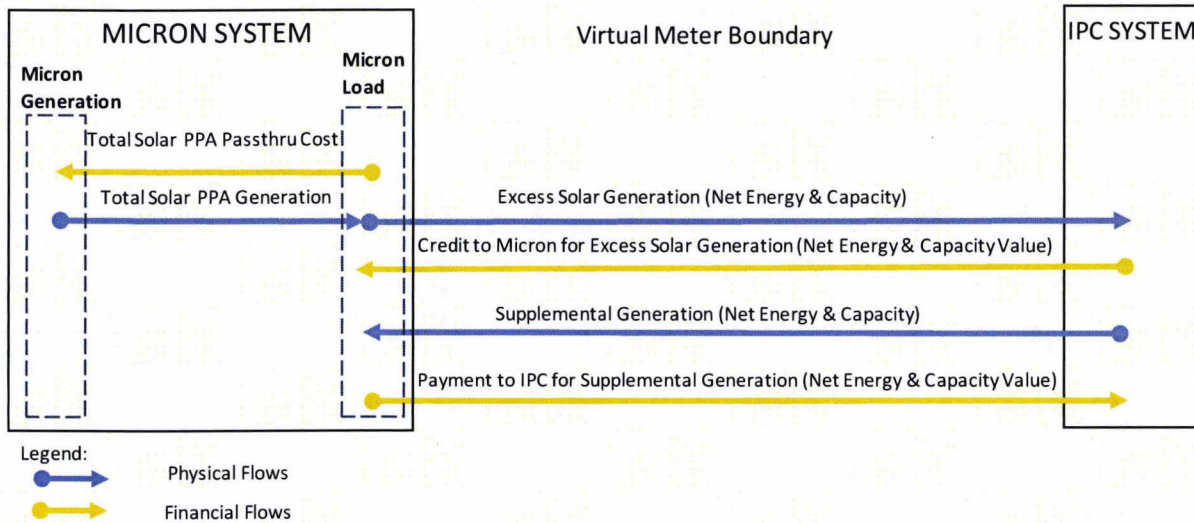
avoided cost, the avoided cost of energy, which is priced at the margin, is higher than the Company’s average embedded energy cost. Due to the size of Micron and future CEYW-Construction renewable resources and because all credits will be included as net power cost paid by all customers, Staff believes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

**A. Staff’s Standard of Analysis**

The capacity of the proposed and future renewable resource(s) has the potential to meet 110% of Micron’s annual energy requirements. Because Micron has a relatively steady load and its resource(s), assumed to be solar, will not be able to produce during periods of time without sunlight, Micron will need to lean on the Company’s system when Micron’s resource(s) are not meeting its demand.

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

*Diagram A: Staff’s Ideal Framework*



This framework is appropriate for two reasons. First, the structure of the Special Contract requires 100% of the renewable PPA costs to be passed through to Micron before credits for Excess Generation and charges for Supplemental Generation are applied. This is

similar to other large customers that own generation capability and generate into their own load,<sup>2</sup> whereby the resources selected will likely be based on Micron's preferences and dedicated for its benefit. These resources may not necessarily be selected as a least cost resource for the benefit of all customers. Second, although the renewable resource(s) the Company will procure for Micron will connect directly to the Company's system separate from the Micron's load, Micron's consumption and the production from its renewable resource(s) will be netted mathematically on an hourly basis using metered data.

Utilizing a "virtual behind the meter" framework for Staff's analysis is ideal because: (1) Supplemental Generation (consumption net of generation) can be analyzed to ensure that the rates charged for electricity delivered to Micron from the Company's system should be based on principles of cost of service ("COS"); and (2) Excess Solar Generation (production net of consumption) exported to the Company's system from Micron 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 not harming customers 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>3</sup>

Diagram A illustrates the boundary between Micron'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 Micron 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

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<sup>2</sup> Examples include Clearwater Paper in Avista's system and Amalgamated Sugar in the Company's system.

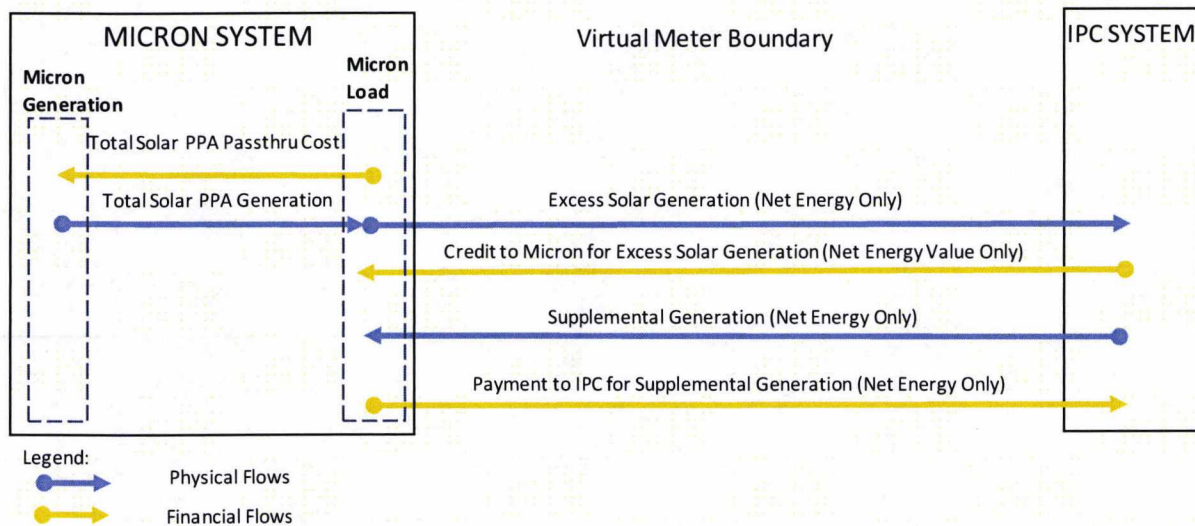
<sup>3</sup> *Indep. Energy Producers Ass'n, Inc. v. Cal. Pub. Utils. Comm'n*, 36 F.3d 848, 858 (9th Cir. 1994) ("If purchase rates are set at the utility's avoided cost, consumers are not forced to subsidize QFs because they are paying the same amount they would have paid if the utility had generated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

costs, the Company proposes 100% of Micron’s resource(s) capacity contribution be sold to the Company’s system, while 100% of Micron’s capacity-related needs for consumption are to be sourced from the Company’s system.

**B. Energy Treatment**

The Company’s proposed treatment for energy is consistent with Staff’s ideal framework since the amount of renewable generation and Micron’s consumption are netted on an hourly basis. Diagram B, depicts the energy treatment in Micron’s Special Contract and is consistent with Staff’s ideal framework for rates.

*Diagram B: Energy Treatment*



The Company plans to track the metered hourly net differences in kWhs and has developed its rate proposals for Supplemental Energy generation and Micron’s excess solar generation (net exports to the Company’s system) reflecting the differences in hourly value depending on whether Micron is a net consumer or net producer. Staff supports netting energy on an hourly basis to capture the significant differences in the value of energy depending on the time of day<sup>4</sup> and if the energy is being imported to or exported from Micron.

<sup>4</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.



## 1. Supplemental Energy

Staff reviewed the Company's proposed method for determining Supplemental Energy rates and recommends approval. Staff believes the proposed method is reasonable because it is based on Micron's currently approved service schedule, which is based on COS. This proposed treatment is consistent with the proposed treatment for CEYW-Construction customers in Case No. IPC-E-21-40. Staff supported this proposed treatment in Case No. IPC-E-21-40 and believe it is appropriate to use in this case for the same reasons discussed in Staff's comments in that case.

## 2. Excess Energy Generation

Staff reviewed the Company's proposed method for determining the rates used to pay Excess 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 forecasted energy prices generated through the Company's IRP, Staff recommends that the hourly rates should also be backstopped by actual Mid-C high and low load-hour market prices so the price for the energy credits is determined by the lower of the proposed Excess Generation Prices (with the additional 85% adjustment) and actual Mid-C high and low load hour market prices for each hour.

The Company's proposed method for determining Excess Generation payments is based on the amount of Excess Generation in each hour using the IRP forecasted Mid-C prices in place of the ICE Mid-C Index prices used in Schedule 86. The Excess Generation credit Micron receives will be calculated using the amount of Excess Generation each hour multiplied by the Excess Generation Price for that hour. The Excess Generation Price is 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's Cogeneration and Small Power Production Non-Firm Energy – Schedule 86.<sup>5</sup> Staff believes the proposed Aurora-generated firm price 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 in Schedule 26.

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<sup>5</sup> Staff Comments at 12, Case No. IPC-E-21-42.

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 in support of 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>6</sup>

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 Micron’s renewable resource(s). The Excess Generation amount could be substantial given the potential for up to 110% of the Micron’s annual requirements being offset by renewable resource(s) as proposed in the CEYW-Construction option.<sup>7</sup> This could require the Company to sell energy in the market and incur additional transmission-related costs. Including the 85% adjustment factor will ensure customers are not harmed by these circumstances.

Staff is also concerned with the use of IRP-forecasted Mid-C prices to determine the Excess Generation Price. Using forecasted prices instead of actual market prices introduces a risk that could cause other customers to pay more than their avoided cost. Therefore, Staff recommends using the lower of the Excess Generation Prices (with the additional 85% adjustment) and actual Mid-C high and low load hour market price on an hourly basis to safeguard other customers from overpaying for excess generation from Micron’s renewable resource(s).<sup>8</sup>

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<sup>6</sup> Application at 3 in Case No. IPC-E-01-40.

<sup>7</sup> Application - Attachment 1 in Case No. IPC-E-21-40.

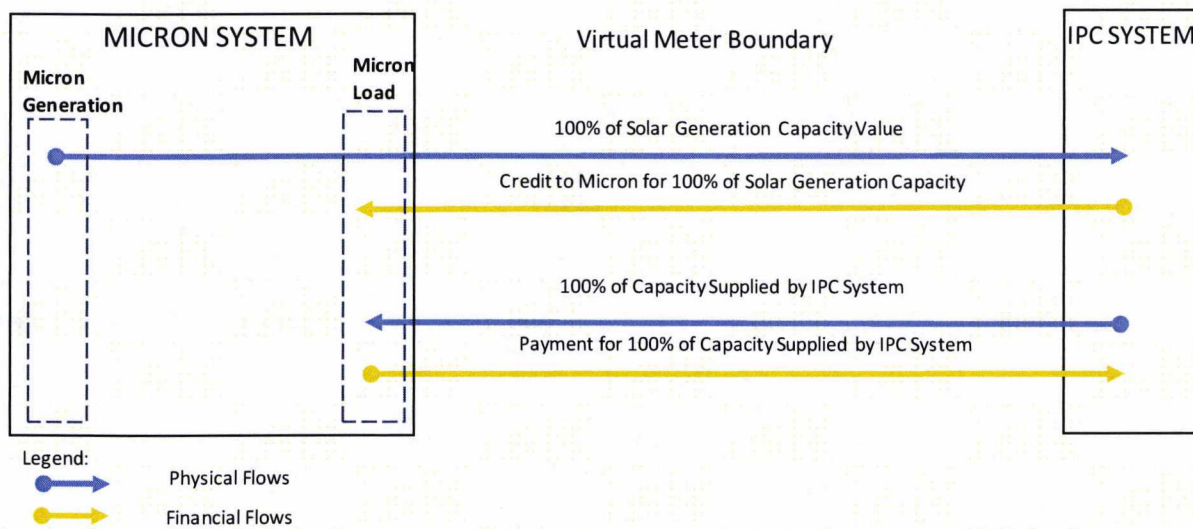
<sup>8</sup> The actual high and low load hour Mid-C prices would be compared to the Excess Generation Price with the 85% adjustment.

### C. Capacity Treatment

The Company’s proposed treatment for capacity is inconsistent with Staff’s ideal framework because the capacity of Micron’s renewable resource is not netted from the capacity needed to serve Micron’s load. The Company assumes 100% of the capacity needed for Micron 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 compensated through a capacity credit. While the treatment of capacity is not netted in the Micron contract, Staff believes the separate evaluation treatment can still accomplish Staff’s main principle of holding other customers harmless.

Diagram C illustrates the capacity treatment in the Micron Contract.

*Diagram C: Capacity Treatment*



The capacity treatment in the Micron contract has two components: (1) Renewable Capacity Credits; and (2) recovery of capacity-related cost consisting of demand charges and an Embedded Energy Fixed Cost Charge. The Renewable Capacity Credit is the credit Micron will receive for the value of capacity contribution from its resources provided to the Company’s system that avoids future additions of capacity. Staff believes that PURPA provides the most appropriate standard to evaluate the Company’s capacity credit proposal. The recovery of capacity-related cost is designed to primarily recover the cost of capacity that the Company must hold to meet Micron’s load.

## 1. Renewable Capacity Credit

Staff reviewed the Company's proposed method for determining the Renewable Capacity Credit rate structure and agrees that Micron should have an RCCE date of July 1, 2023, for the Black Mesa PPA allowing payments of Renewable Capacity Payments starting the month following the project's commercial operation date. Aschenbrenner, Direct at 15. However, Staff recommends two changes to the Company's Renewable Capacity Credit proposal:

1. Future renewable resources acquired for Micron (beyond the Black Mesa PPA) should only begin receiving credits based on the PURPA first capacity deficiency date approved by the Commission at the time a PPA or a construction agreement is signed; and
2. The payments for the contribution of capacity should be based on the "time of output" rate structure used for IRP-based energy storage PURPA projects.

### *a. Establishment of the RCCE Date*

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>9</sup> The Commission explained this principle when it 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 Micron for avoiding capacity cost. Since the Application proposes to compensate Micron for 100% of its capacity contribution, it is like the capacity contributions of a QF through PURPA. QF capacity payments are based on the date authorized through the Company's biannual PURPA deficiency date filing at the time of executing the PPA and the payments do not begin until this date occurs.

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<sup>9</sup> Order Nos. 33377, 33159, and 33898.

The Company proposed that Micron begin receiving Renewable Capacity Credit payments for future resources starting with the next capacity deficiency date from the load and resource balance of the most recently acknowledged IRP. Aschenbrenner, Direct at 15. However, Staff believes the Company needs to further clarify the timing of when this occurs to ensure the timing coincides with a deficiency date that has been authorized by the Commission and when commitments for resources have been made. Staff recommends that future renewable resources acquired for Micron (beyond the Black Mesa PPA) begin receiving the credit based on the capacity deficiency date approved by the Commission for PURPA at the time of a future PPA or construction agreement is signed.

For the Black Mesa PPA, the Company is proposing to use the first capacity deficiency date proposed in Case No. IPC-E-21-09 as the RCCE date, which is July 2023.<sup>10</sup> *Id.* at 15. Although Staff agrees that the July 2023 date should be used for the RCCE date, the Company's rationale for determining the RCCE date is not aligned to Staff's recommended timing for future resources. The authorized first deficiency date was July 2026 at the time that the Black Mesa PPA was signed on February 16, 2022. Application Attachment 1. Furthermore, the updated July 2023 first deficiency date was not authorized until May 25, 2022, more than 2 months after this case was filed.

Staff believes that the circumstances surrounding the Company's 2019 IRP provides an exception to Staff's RCCE date recommendation for future Micron resources. The original application filed in Case No. IPC-E-21-09<sup>11</sup> proposed an August 2028 first deficiency date as a result of the 2019 IRP. Due to the 2019 IRP being filed approximately 15 months late, there was significant overlap between the 2019 IRP and the 2021 IRP development cycles. Because of several improvements and updates between the two IRPs, the Company amended the application in Case No. IPC-E-21-09 after discovering that deficits were going to occur as early as 2023, much earlier than originally anticipated in the 2019 IRP. As a result, the Company submitted its 2021 Request for Proposal ("RFP") for capacity resources to resolve its 2023 capacity deficits.

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<sup>10</sup> Schedule 26 included in the Application states that the Renewable Capacity Credit will be provided starting the month of the project's RCCE date or the month following the respective project's commercial operation date, whichever is later.

<sup>11</sup> Case No. IPC-E-21-09 was the biannual first deficiency date case the Company was required to file after acknowledgment of the 2019 IRP.

Black Mesa was one of the resource proposals submitted and selected to meet the Company's 2023 deficit. Because of this, the selection of Black Mesa was based on the need for system capacity and then opportunistically used to fulfill Micron's clean energy goals. Application at 7-8, Case No. IPC-E-22-13. In addition, Micron's load needs to be served regardless of whether Black Mesa is allocated to meet all customer needs or dedicated to Micron. As such, Staff agrees with the Company that Micron should receive immediate renewable capacity credit payments based on a July 2023 RCCE date.

*b. Time of Output Rate Structure*

Staff recommends that the rate structure for capacity credits 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 Order No. 34794 and 34913. Staff believes that the IRP-based implementation of this rate structure should be used because the size of Micron's resources are larger than the 100 kW published rate limit approved by the Commission for solar, wind, and energy storage QFs.<sup>12</sup> This rate structure only allows capacity payments for generation that occurs during peak and premium peak hours, 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 also recommends that the surrogate resource used to determine the capacity credit should be based on the lowest cost capacity resource included for selection within the Company's IRP. However, the type of resource and its avoided capacity cost should not change for the life of the contract. Staff further recommends that this resource and its capacity cost should be identified using the most recently acknowledged IRP at the time that the PPA or a resource construction agreement is signed. However, the peak and premium peak hours authorized in the Load and Natural Gas Forecast Annual Update for PURPA could change the number of hours that the avoided cost of the surrogate resource is spread, necessitating a change in the per kWh rates every year. Because the structure of the Special Contract requires changes

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<sup>12</sup> See Order Nos. 32262, 32697, and 34794.

every two years with acknowledgment of the IRP, Staff recommends that the per kWh rate change on the same schedule utilizing the peak and premium peak hours authorized at that time.

Staff believes its proposed rate and payment structure is appropriate for several reasons. As discussed earlier, this structure ensures accountability by only compensating Micron for the capacity avoidance it delivers. Second, this rate and payment structure was developed to provide compensation for avoiding capacity cost, specifically for energy storage resources, and the ESA mentions that storage resources could potentially be added in the future. Idaho Power Exhibit No. 1 at 8. However, because solar plus battery and wind plus battery combinations are likely to occur in the future, this structure can be applied regardless of its source because it is based on the output of the resources and not on the resource type. As the Company provides additional CEYW-Construction offerings in the future, the use of this rate structure can provide consistency across similar projects.

## 2. Recovery of Capacity-Related Cost

Staff reviewed the Company's proposed method for recovery of capacity-related cost and recommends approving them as proposed. The recovery of capacity-related cost is normally accomplished through demand charges and through the volumetric rate. The Company has proposed demand charges based on Micron's currently approved Schedule 26. To ensure full recovery of capacity-related costs embedded in the Micron's volumetric rate, the Company has proposed an Embedded Energy Fixed Cost Charge applied to energy from its renewable resource(s) that offsets Micron's load. The proposed demand charges and the Embedded Energy Fixed Cost Charge are reasonable because the methods used to determine them are consistent with the Company's CEYW-Construction proposal and are based on COS.

### *a. Demand Charges*

The Company's proposal for demand charges includes the Monthly Contract Demand Charge, the Monthly Billing Demand Charge, and the Daily Excess Demand Charge from Micron's currently approved Schedule 26. The Company's proposal is appropriate because Micron's use of capacity from the system is not likely to change since Micron needs that capacity to be available, whether its resources are producing or not.

*b. Embedded Energy Fixed Cost Charge*

In addition to the demand charges, Micron will pay an Embedded Energy Fixed Cost Charge to recover fixed costs that are currently embedded in Micron's volumetric energy rate. Because a portion of the Company's capacity cost is recovered through the volumetric rate, any production from Micron's resource(s) consumed by Micron will cause the Company to under recover capacity cost allocated through the volumetric charge. The Company proposes Micron be charged an Embedded Energy Fixed Cost Charge for generation from their resource(s) that offsets their consumption. Without this charge, Micron would under pay for its use of capacity from the system, ultimately shifting cost to other customers. The proposed Embedded Energy Fixed Cost Charge provided in Attachment 1 to the Application is reasonable because these charges are determined based on embedded costs using the most recent COS information.

**II. Company's No-Harm Analysis**

Staff reviewed the Company's No-Harm Analysis and believes it indicates that the Micron contract with the Black Mesa PPA will not harm other customers but the analysis 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 Micron contract with the Black Mesa PPA. The results of the Company's analysis show that the system with the Special Contract could provide a \$4.1 million<sup>13</sup> benefit to customers over a 20-year period.

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 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.

**III. Transmission Facility Construction Costs**

Staff reviewed the Special Contract and the PPA and believes that the costs necessary to receive electric service from Black Mesa Energy, including transmission construction cost and

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<sup>13</sup> See Company response to Staff Production Request No. 1.



ongoing operation and maintenance cost up to the point of delivery, will not be borne by other ratepayers.

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

Any environmental attributes (also known as RECs) associated with the output from the renewable resources acquired by the Company for Micron will be transferred directly from the project or developer to Micron. Application at 9. Allowing Micron to maintain ownership of RECs is one of the primary purposes of the CEYW-Construction offerings, which Staff generally supports.

In IPC-E-21-42, Staff took issue with the treatment of the value of system-generated RECs and how they are allocated to CEYW-Construction customers through the PCA. In particular, Staff questioned if it was fair for CEYW-Construction customers, who are using the system as a battery,<sup>14</sup> to receive the benefits of system-generated RECs in the same way as other customers who receive REC value through the PCA. Because this question was never addressed in the prior filings and in this Application, Staff, again, recommends the Company hold a workshop with Staff and other interested parties to evaluate how REC benefits in the PCA should be allocated to Micron and other CEYW-Construction offering customers before they begin generating renewable energy.

#### **V. Analysis of Provisions in the Special Contract to Mitigate Risk**

In prior CEYW-Construction filings<sup>15</sup>, the Special Contract included parent guaranties against each PPA. Staff recommended that each power purchase agreement with “new” or existing customers include parent guaranties for the life of the agreement. The Company included such guaranties in this Application.

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 Micron have written into the Special Contract additional provisions that should financially protect customers. With guarantees in place, the Special Contract should protect other retail customers. Again, Staff would like to see similar contract provisions and guaranties in future CEYW-Construction

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<sup>14</sup> See, e.g., Staff Comments at 17-18 in Case No. IPC-E-21-42.

<sup>15</sup> See Staff Comments in Case No. IPC-E-21-42.

contracts for “new” and existing customers and Staff will continue to review future CEYW-Construction filings to ensure that guaranties are adequate.

## **VI. Solar Supply Chain Investigation**

On March 28, 2022, the Department of Commerce (“Department”) initiated an investigation to consider whether the United States should impose additional duties on imports of solar cell and modules coming from Cambodia, Malaysia, Thailand, and Vietnam (“CMTV”) due to its investigating the claim that CMTV are selling Chinese-made solar panels in attempt to circumvent tariffs.<sup>16</sup> A preliminary decision on whether to impose anti-circumvention duties is due by August 29, 2022. Numerous manufacturers, solar installers, and other U.S. companies have halted most of their imports of solar cells and modules from CMTV, which provide roughly 80% of foreign solar cells and modules to United State markets.

Multiple reports state that the supply of solar cell and modules has declined and that most large-scale solar projects have been delayed or cancelled. Therefore, Staff is concerned that Black Mesa will have a difficult time acquiring the equipment it needs to be ready for its anticipated commercial operation date. Staff asked the Company about the potential impact of the Department’s investigation, and Black Mesa Energy reiterated it will meet the commercial operation date of June 1, 2023.<sup>17</sup>

Staff recommends that the Company notify the Commission and provide an update and any known impacts to the project due to changes or issues regarding supply of solar cells and/or solar modules. Notification should include updates of supply chain issues, a list of supplies cancelled or delayed, and/or if force majeure is being considered.

## **VII. Accounting Treatment in the PCA and the next General Rate Case**

Staff supports the Company’s proposed accounting treatment in the PCA, but recommends that the credits for excess energy and capacity credits included in net power cost be subject to 95% sharing. The Company will pay the contract rate for the PPA and will pay 100% of the output—matching these costs with corresponding revenue.

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<sup>16</sup> Department of Commerce Anti-Circumvention Inquiry, Barcode 4225929-02 A-570-979/C-570-980, into assembled modules of solar panels in Cambodia, Malaysia, Vietnam, and Thailand.

<sup>17</sup> Company response to Staff Production Request Nos. 3, 4, 5, 6, 18 and 23.

In Case No. IPC-E-21-42, Staff made recommendations regarding CEYW-Construction renewable resources being booked to the PCA. As it did in that case, Staff recommends that the Company provide the following items annually with the PCA filing: (1) the amount of consumption and generation from the renewable resource(s) serving Micron and other CEYW-Construction projects; and (2) an annual Micron load forecast that is compared to Micron'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 Micron does not become a net producer of energy, which could result in a cost shift to other retail customers.

Regarding the accounting treatment in base rates, Staff recommended in Case No. IPC-E-21-42 that the Company schedule a meeting with Staff to discuss the treatment of Schedule 26 costs, revenues, and loads in base rates prior to the next general rate case. Staff reiterates this recommendation.

#### **VIII. Prudence and Authorization of Renewable Resource PPAs by the Commission**

The Company has proposed that future PPA's dedicated to Micron should not be required to be filed for review or approval by the Commission. As recommended in Case No. IPC-E-21-42, Staff disagrees with the Company's proposal and recommends the Company file all CEYW-Construction PPA contracts with the Commission for review and approval. Furthermore, in reviewing the specific provisions included in the Black Mesa PPA, Staff identified concerns regarding the circumstances under which the Company identified Black Mesa as a resource to fill its 2023 capacity deficiency, further supporting the need for Commission review.

Staff agrees that the selection of renewable resources and rates in the PPA do not need to be authorized by the Commission because the cost of the PPA will be 100 % passed through to Micron and because Staff believes the rates for import and export of capacity and energy between Micron and the Company are reasonable if Staff's modifications are implemented. However, there are other reasons Staff believes each PPA should be reviewed and authorized by the Commission. Examples include: (1) ensuring that interconnection costs are not passed on to the general body of ratepayers; (2) CEYW-Construction customers are not being favored with lower cost resources that could potentially be used for the system; and (3) that contract provisions are included to protect customers from unnecessary risks.

Staff identified risks in the Black Mesa PPA associated with the operation dates included in the contract that could affect both the reliability and cost for the Company's customers. The Parties established a Scheduled Operation Date of June 1, 2023, but negotiated a Guaranteed Operation Date up to 180 days after the Scheduled Operation Date. Application at 8. If Black Mesa does not become operational until after the summer of 2023, the project will not be able to provide contribution of capacity during the Company's 2023 summer critical capacity period. As discussed above, Black Mesa was primarily contracted as a result of the Company's 2023 need for capacity resources through its 2021 RFP. This could impact customer reliability if the Company cannot find alternative capacity to replace Black Mesa or, if alternative sources are found, the cost could be significantly higher causing all customers to pay premium prices in the PCA.

In addition, if the Black Mesa Energy solar project is not operational by November 28, 2023, Black Mesa Energy must be charged the full contracted delay damages<sup>18</sup> and the PPA be terminated and/or renegotiated with Commission approval. Staff is concerned that with supply chain constraints and the short timeline that Black Mesa Energy is working against, that customers must be protected, and Black Mesa Energy be held to the operational dates as outlined in the PPA.

## **STAFF RECOMMENDATIONS**

Staff recommends approval of the Special Contract, the Black Mesa PPA, and modifications to Schedule 26 contingent on the following modifications if approved by the Commission as outlined below:

1. The Company should provide a separate filing for the approval of the Avoided Cost Averages and all other rate components determined from the IRP and it 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. An additional 85% adjustment should be applied to the proposed Excess Generation Price consistent with Schedule 86;

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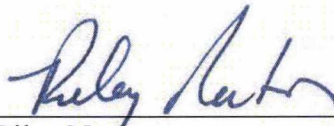
<sup>18</sup> See Confidential Company Response to Production Request No. 5.

3. The Excess Generation Credit rate should be based on 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 adjustments) for each hour;
4. For Renewable Capacity Credits, future Micron renewable resources RCCE date(s) 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;
5. The Renewable Capacity Credit should utilize the rate and payment structure for IRP-based energy storage projects (*See* Order No. 34913), which would provide Micron avoided capacity cost payments on a dollar per kilowatt-hour (“kWh”) basis and only for actual energy delivered to the Company’s system during system peak and premium peak hours;
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. The Company schedule a meeting with Staff to discuss the treatment of Schedule 26 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 resource construction agreement be reviewed and authorized by the Commission;
11. The Company provides the following items annually with the PCA filing: (1) the amount of consumption and generation from the renewable resources serving Micron and other CEYW-Construction projects; and (2) an annual Micron load

forecast that is compared to Micron's annual generation forecast for all signed PPA's broken down on a monthly basis; and

12. Any change or issues regarding supply of solar cells and/or solar modules that the Company notify the Commission and provide an update and any known impacts to the project.

Respectfully submitted this 29<sup>th</sup> day of June 2022.



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Riley Newton  
Deputy Attorney General

Technical Staff: Michael Eldred  
Travis Culbertson


i:umisc/comments/ipce22.6rnmctnc comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 29<sup>th</sup> DAY OF JUNE 2022, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-22-06, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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