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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)
COMPANY'S APPLICATION FOR APPROVAL)
OF A POWER PURCHASE AGREEMENT WITH) CASE NO. IPC-E-22-29
PLEASANT VALLEY SOLAR, LLC.)
)
) REDACTED COMMENTS OF
) THE COMMISSION STAFF
)

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

BACKGROUND

On November 14, 2022, Idaho Power Company (“Idaho Power” or “Company”), filed an application (“Application”) with the Idaho Public Utilities Commission (“Commission”) requesting an order approving a 20-year Power Purchase Agreement (“PPA”) between Idaho Power and Pleasant Valley Solar, LLC (“Pleasant Valley Solar” or “Seller”). The Company represents that the PPA was entered into with the expectation of assigning the associated energy and Green Tags/Environmental Attributes to Brisbie LLC (“Brisbie”) under the provisions contained in the Special Contract submitted for Commission review and approval in Case No. IPC-E-21-42. The Company requests an order from the Commission prior to May 11, 2023.

Idaho Power and Brisbie have negotiated a Special Contract for the provision of electric service to Brisbie by Idaho Power. The Special Contract, or the Energy Services Agreement (“ESA”), was filed with the Commission for review and approval in Case No. IPC-E-21-42.

Under the terms of the PPA in this Application, Pleasant Valley Solar will build, own, operate, and maintain a 200 megawatt (“MW”) alternating current (“AC”) solar photovoltaic generation facility (“Facility”) and will supply the output to Idaho Power’s system. Brisbie is identified in the PPA as a third-party beneficiary receiving energy and Green Tags associated with the Facility’s Net Output.

STAFF ANALYSIS

Staff’s review focused on the Parent Guaranty, rate structures before the Commercial Operation Date, degradation factors of the facility output, Expected Energy, Section 23 regarding effectivity of the contract, Liquidated Damages for Output Shortfall, and the relationship between this case and Case No. IPC-E-21-42 (Brisbie). Staff recommends that the parties update the PPA to reflect the following items:

1. Correcting the mistake of degradation factors in Section 1.35.
2. Ensuring the term Expected Energy is used correctly in the PPA.
3. Modifying Section 23 to reflect significance of Commission approval.
4. Including transmission-related costs in calculating Liquidated Damages for Output Shortfall.

Parent Guaranty

The Special Contract required that [REDACTED]

[REDACTED]. Special Contract at 25. Staff concludes that the Parent Guaranty requirement of the Special Contract was met.

The PPA was executed on October 27, 2022. A Parent Guaranty for the PPA was delivered on November 7, 2022, within ten business days. *See* Response to Staff’s Production Request No. 4.

Rate Structures Before Commercial Operation Date

Staff believes the rate structure for periods prior to the Commercial Operation Date is reasonable. Before the Commercial Operation Date, the Net Output delivered by the Facility is called Test Energy, which is defined as [REDACTED] PPA at 17. Brisbie's load will be matched on an hourly basis against any Test Energy delivered to Idaho Power from the Facility. The rate structure for the periods prior to the Commercial Operation Date will be similar to the rate structure for the periods after the Commercial Operate Date, except that Net Output delivered to Idaho Power after the Commercial Operation Date will be paid at [REDACTED], while the Test Energy delivered to Idaho Power before the Commercial Operation Date will be paid at [REDACTED]. See Response to Staff's Production Request No. 23 (a). Despite the difference, [REDACTED]. See Response to Staff's Production Request No. 23 (b). Because of the [REDACTED], Staff does not have any issues with this rate structure.

Degradation Factor

Staff recommends that the parties file an updated PPA correcting the mistake in Section 1.35 of the PPA. Section 1.35 defines Expected Energy, which means "[REDACTED] of Net Output in the first, full Contract Year, reduced by an annual degradation factor of [REDACTED] percent in the first Contract Year, and [REDACTED] percent per Contract Year thereafter..." However, the [REDACTED]-percent annual degradation factor should have been applied to the second Contract Year, instead of the first Contract Year. See Response to Staff's Production Request No. 5(a).

Expected Energy

Staff recommends that the parties file an updated PPA, ensuring the term Expected Energy is used correctly. According to its definition stated above, Expected Energy is an annual concept, not a monthly concept. However, the term is mistakenly used as a monthly concept in several places in the PPA. For example, the term is used in Section 7.12.1 and Section 7.12.2.2 as a monthly concept. The Company confirmed that the term should be replaced by Estimated Net Output Amount in these two sections. See Response to Staff's Production Request 5(e).

Section 23 – Entire Agreement

Section 23 of the PPA contains the statement "[n]o modification hereof shall be effective unless it is in writing and executed by both Parties." PPA at 63. Staff believes that this statement neglects the significance of Commission approval and recommends that the statement be updated to reflect the need for the Commission approval before any modification becomes valid. For example, the statement can be updated as follows: No modification hereof shall be effective unless it is in writing and executed by both Parties *and subsequently approved by the Commission.*

Liquidated Damages For Output Shortfall

Staff recommends inclusion of transmission costs in the calculation of liquidated damages for Output Shortfall. [REDACTED]

[REDACTED] PPA at 47. [REDACTED]

[REDACTED] PPA at 47. [REDACTED]

[REDACTED] PPA at 8. This calculation does not consider transmission costs associated with moving energy from market to Idaho Power to cover the Output Shortfall.

Idaho Power stated that actual damages may or may not be the calculated liquidated damages and that there may or may not be transmission costs incurred. *See* Response to Staff’s Production Request No. 25. Staff believes transmission costs should be included in the calculation of liquidated damages for the following reasons. First, when market price is used in calculating liquidated damages, transmission costs associated with moving energy from market to Idaho Power should be considered. Otherwise, when the Seller does not meet the Output Guarantee, ratepayers (instead of the Seller) will have to pay for the transmission to move replacement energy to Idaho Power. [REDACTED]

[REDACTED] in the calculation of the damages for situations in which the Seller has committed an Event of Default where Seller fails to deliver. Because the impact of an Event of Default and the impact of an Output Shortfall are essentially the same in nature, Staff believes that they should be treated in a consistent manner.

Relationship Between this Case and Case No. IPC-E-21-42 (Brisbie)

This case is focused on the price that Idaho Power pays Pleasant Valley, which will be passed through to Brisbie, while Case No. IPC-E-21-42 is focused on the rate structure between Brisbie and Idaho Power using Schedule 33. Currently, the Brisbie ESA has not been approved by the Commission. However, the Company cannot accept deliveries of Net Output and Green Tags from the Seller until both cases are approved. *See* Section 3.1 of the PPA and Response to Staff's Production Request No. 10. Therefore, Staff is not concerned about the sequence of Commission decisions between both cases.

The Facility is expected to begin delivering energy in the first quarter of 2025. *See* Response to Staff's Production Request No. 11. Brisbie is expected to begin operations in [REDACTED] Tim Tatum Direct Testimony, Case No. IPC-E-21-42 at 4. Staff anticipates Commission decisions before [REDACTED].

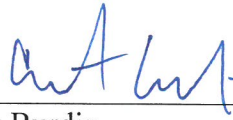
In addition, the 12X24 forecast currently required in the PPA will not be required as a result of the Commission decision in the Brisbie case. According to Section 7.7.3 of the PPA, Seller shall provide an initial 12X24 Net Output forecast and update this forecast at least every two years on a mutually agreed upon schedule that is intended to coincide with the Integrated Resource Plan. The 12X24 forecast is used in calculation of Renewable Capacity Credit ("RCC") for the Facility. If the Commission orders the Company to use [REDACTED] [REDACTED], the 12X24 forecast will not be required and the Company anticipates deprioritizing the forecast. *See* Response to Staff's Production Request No. 8. Staff believes this plan is reasonable.

STAFF RECOMMENDATIONS

Staff recommends approval of the PPA conditioned on the parties updating the PPA to reflect the following items:

1. Correcting the mistake of degradation factors in Section 1.35.
2. Ensuring the term Expected Energy is used correctly in the PPA.
3. Modifying Section 23 to reflect significance of Commission approval.
4. Including transmission-related costs in calculating Liquidated Damages for Output Shortfall.

Respectfully submitted this 8th day of March 2023.



Chris Burdin
Deputy Attorney General

Technical Staff: Yao Yin
Michael Eldred

i:umisc/comments/ipcc22.29 comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 8TH DAY OF MARCH 2023, SERVED THE FOREGOING **REDACTED COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-22-29, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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SECRETARY