

RILEY NEWTON
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0318
IDAHO BAR NO. 11202

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Street Address for Express Mail:
11331 W CHINDEN BLVD, BLDG 8, SUITE 201-A
BOISE, ID 83714

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S APPLICATION FOR APPROVAL)	CASE NO. IPC-E-23-02
OR REJECTION OF AN ENERGY SALES)	
AGREEMENT WITH NORTH SIDE ENERGY)	
COMPANY, INC. FOR THE SALE AND)	COMMENTS OF THE
PURCHASE OF ELECTIC ENERGY FROM)	COMMISSION STAFF
<u>THE BYPASS HYDRO PROJECT</u>)	

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 January 19, 2023, Idaho Power Company ("Company") applied for approval or rejection of a proposed energy sales agreement ("ESA") with North Side Energy Company, Inc. ("Seller" collectively with the Company, "Parties") for the energy generated by the Bypass Hydro Project ("Facility"). The Facility is a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

The Facility is located on the North Side Canal Company's main canal near Hazelton, Idaho and has been delivering energy to the Company under a firm energy sales agreement entered on November 12, 1986, and expiring on May 31, 2023. The proposed ESA, executed by

the Parties on January 3, 2023, contemplates a 20-year term with non-levelized, seasonal hydro published avoided cost rates with full capacity payments to the Seller for the entire term.

STAFF REVIEW

Staff's review of the ESA focused on Section B-7 Designated Network Resource ("DNR"), Facility nameplate capacity, capacity payments, avoided cost rates, and Article XXIII Modification. Staff recommends that the parties update the proposed ESA to reflect the following items:

1. Updating the incomplete statement contained in Section B-7;
2. Correcting the Facility nameplate capacity and explaining the difference between the Facility nameplate capacity (9999 kW) and the net nameplate capacity (9960 kW) in Appendix B;
3. Updating Article XXIII Modification to achieve two objectives: (1) the modified Facility operates under a correct and accurate contract that describes the characteristics and parameters of the modified Facility; and (2) the rates paid to the QF and recovered from ratepayers, starting from the first operation date after the Facility is modified, reflect the proper and authorized rate of the modified Facility; and
4. Including recovery of Net Power Supply Expenses ("NPSE") in the Power Cost Adjustment ("PCA") based on proper and authorized rates starting from the first operation date of any facility after it has been modified.

Staff also recommends approval of the Errata filed on February 16, 2023, which contains a replacement page for Section E-2 of Appendix E.

Section B-7

Section B-7 of the proposed ESA contains an incomplete statement: "If this Agreement is 1) executed and approved by the Commission; 2) a GIA has been executed by both parties; and 3) the Seller is in compliance with all requirements of that GIA." Staff recommends completing this statement so it makes sense.

Facility Nameplate Capacity

Appendix B states “Facility Nameplate Capacity: 9960 kW.” ESA at 41. However, the actual Facility nameplate capacity is 9999 kW. Response to Staff’s Production Request No. 2 (a). The Company explained that 9960 kW represents the net generator nameplate capacity amount that the Facility is able to deliver less station service, which is consistent with the Schedule 72 Generator Interconnection Agreement and the 1986 contract¹. Response to Staff’s Production Request 2(b). The Maximum Capacity Amount of the Facility is set at 9960 kW. ESA at 42. Staff recommends that the Parties correct the value of the Facility nameplate capacity and explain the difference between 9999 kW and 9960 kW in Appendix B.

Capacity Payments

The ESA allows immediate capacity payments and Staff believes this treatment is reasonable. In Order No. 32697, the Commission stated that “if a QF project is being paid for capacity at the end of the contract term and the parties are seeking renewal/extension of the contract, the renewal/extension would include immediate payment of capacity.” The current avoided cost rates in the 1986 contract were established in Order No. 20350 in Case No. U-1006-248 and those rates do not contain capacity payments.²

However, since 2000, the Company has added significant amounts of capacity to meet capacity needs, including the Danskin (2001 and 2008), Bennett Mountain (2005), and Langley Gulch (2012) gas plants. Staff believes because the Facility has operated since the mid-1980s and throughout the Company’s capacity deficiency periods, the Facility has contributed to meeting the Company’s need for capacity and should be granted immediate capacity payments. Order Nos. 34875, 34961, and 35067.

The 1986 contract listed the capacity at 9960 kW, and the Maximum Capacity Amount of this ESA is also 9960 kW. Staff believes the Facility should be granted immediate capacity payments for its contribution of capacity to the Company’s system over the full term of the ESA.

¹ The 1986 contract listed a nameplate rating of 3320 kW for each of three generators for a total of 9960 kW. The 1986 contract at 35.

² Order No. 20350 stated “[t]he current avoided cost payments for Idaho Power, as well as the payments set in the -200 case, are 100% energy based. In other words, payments are made solely for energy deliveries, and there is no separately calculated capacity payment.” Order No. 20350 at 19.

Avoided Cost Rates

The avoided cost rates contained in the proposed ESA are correct except for the rates of Year 2023 in Section E-2 of Appendix E (Base Energy Light Load Purchase Price), which are not fully shown due to a formatting issue. ESA at 53. The Company filed an Errata to the Application on February 16, 2023, providing a replacement page for Section E-2 of Appendix E. The new rates for Year 2023 provided in the Errata are correct.

Article XXIII Modification

There is a possibility for a PURPA project owner to modify its facility during the term of a contract. Provisions within “Article XXIII Modification” of the proposed ESA describe the process for potential Facility modifications. If a facility is modified, Staff believes two critical objectives need to be achieved. First, the modified facility needs to operate under a correct and accurate contract that describes the characteristics and parameters of the modified facility. Second, the rates paid to the QF and later recovered from ratepayers, starting from the first operation date after a facility is modified, must reflect the proper and authorized rate of the modified facility.

Staff recommends two courses of action. First, Staff recommends that the Company modify “Article XXIII Modification” of the proposed ESA to ensure both objectives will occur. Second, Staff recommends that the Commission direct the Company to include recovery of NPSE in the Company’s annual PCA filing based on the new rates, starting on the first operation date of the modified Facility to protect ratepayers. Staff believes that, moving forward, this recommendation should apply to all QFs under contract with the Company when modifications occur.

Currently, there have been two processes for implementing facility modifications. The Commission recently approved the Amended Power Purchase Agreement (“PPA”) of Amy Family Holdings in Case No. PAC-E-22-08, which adopted the following sequence of events if the Facility was modified:

1. Seller notifies the Company when Seller has an intention of modifying the Facility;
2. Parties seek Commission approval of the intended modification to the Facility;
3. Commission approval is granted;

4. The modification to the Facility occurs; and
5. If the actual modification deviates from the approved modification, an amendment needs to be filed with the Commission for approval to reflect the actual modification occurred.

Amended Power Purchase Agreement of Amy Family Holdings at 20.

In contrast to the process approved in Case No. PAC-E-22-08, but consistent with the current modification provision of the proposed ESA, the Company plans to seek approval of an amendment to an ESA only after the modification to the Facility actually occurs and depending on the nature of the modification. Response to Staff's Production Request No. 1(a). In addition, the Company believes:

The modification language Idaho Power proposed in Case No. IPC-E-22-28³ provides Idaho Power the option to revise the ESA, or terminate, upon notification of a facility modification. The nature of the proposed facility modification would dictate what kind of ESA change (or termination) might be appropriate. Idaho Power would consider the nature of the modification and whether the modification properly should trigger a change to rates, a different revision to the ESA, or termination of the ESA. Any actual changes to or termination of the ESA would be implemented through subsequent contractual documents-not through the existing language of the ESA. Depending on the circumstances, any subsequent ESA amendment or termination could be made effective as of the date of the facility modification and would be submitted to the Commission for approval. By addressing the possibility of facility modifications and requiring the Seller to provide information to Idaho Power, the proposed modification language provides flexibility and a process by which to ensure that the ESA accurately reflects the as-built facility and contains the appropriate rates and other terms and conditions.

Response to Staff's Production Request No. 1(c).

Although the method approved in the Amy Family Holdings PPA and the Company's current method each have pros and cons, Staff believes under either method, a modified facility could operate under the original avoided cost rates, resulting in potentially inaccurate payments to the QF unless the Commission authorizes retroactive rates. The Commission has expressed its preference for not authorizing retroactive rates.

³ The Commission has not issued a final order in Case No. IPC-E-22-28 as of March 7, 2023, when these comments are being finalized.

[A]pproving PPAs between QFs and utilities with retroactive rates is not our preference or practice historically. We encourage QFs and utilities to take reasonable measures and timely submit proposed PPAs to allow adequate time for Staff and interested parties to conduct their due diligence and for us to deliberate and issue an order before the proposed effective date.

Order No. 35383.

For this reason, Staff recommends that the Company modify “Article XXIII Modification” within the proposed ESA to meet both of Staff’s objectives.

In addition, to ensure ratepayers are not affected by a mismatch in rates due to a facility modification, Staff recommends that the Commission direct the Company to include recovery of NPSE in the PCA filing based on the proper and authorized rates starting from the first operation date of any facility that has been modified, regardless of what is paid to the QF. By making this apply to all QFs if and when modifications occur moving forward, ratepayers will be protected from inaccurate avoided cost rates.

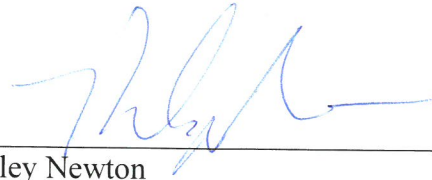
STAFF RECOMMENDATIONS

Staff recommends that the parties update the ESA to reflect the following items:

1. Updating the incomplete statement contained in Section B-7;
2. Correcting the facility nameplate capacity and explaining the difference between the facility nameplate capacity (9999 kW) and the net nameplate capacity (9960 kW) in Appendix B;
3. Updating Article XXIII Modification to effectively achieve the two objectives mentioned above; and
4. Including recovery of NPSE in the PCA based on proper and authorized rates starting from the first operation date of any facility after it has been modified.

Staff also recommends approval of the Errata filed on February 16, 2023, which contains a replacement page for Section E-2 of Appendix E.

Respectfully submitted this 13th day of March 2023.



Riley Newton
Deputy Attorney General

Technical Staff: Yao Yin

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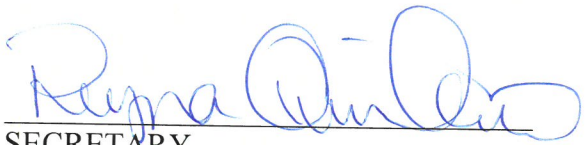
CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 13th DAY OF MARCH 2023, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-23-02, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

DONOVAN E WALKER
MEGAN GOICOECHEA ALLEN
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
E-MAIL: dwalker@idahopower.com
mgoicoecheaallen@idahopower.com
dockets@idahopower.com

ENERGY CONTRACTS
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
E-MAIL: energycontracts@idahopower.com

ALAN W HANSTEN
GENERAL MANAGER
NORTHSIDE ENERGY CO
921 N LINCOLN AVE
JEROME ID 83338
E-MAIL: awh@northsidecanal.com



REYNA QUILLEY

SECRETARY