

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	CASE NO. IPC-E-23-19
COMPANY’S APPLICATION FOR)	
APPROVAL OR REJECTION OF AN)	
ENERGY SALES AGREEMENT WITH)	
AMERICAN FALLS RESERVOIR)	ORDER NO. 35908
DISTRICT NO. 2)	
)	

On May 11, 2023, Idaho Power Company (“Company”) applied (“Application”) to the Idaho Public Utilities Commission (“Commission”) for approval or rejection of an energy sales agreement (“ESA”) with American Falls Reservoir District No. 2 (“Seller”) for the energy generated by the Dietrich Drop Hydro Project (“Facility”). The Facility is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The Company requested that this matter be processed by Modified Procedure with a final order being published before the expiration of the current contract on August 31, 2023.

On May 15, 2023, Sorenson Engineering, Inc., (“Sorenson”) and Idaho Hydroelectric Power Producers Trust (“IdaHydro”) (collectively “Commenters”) jointly filed a public comment (“Public Comment No. 1”) supporting a new annual period for determining seasonal hydro deliveries (“Proposed Calendar”).

On June 14, 2023, the Commission issued a Notice of Application and Notice of Modified Procedure establishing public comment and Company reply deadlines. Order No. 35815. Staff filed comments and the Company filed a reply.

On July 28, 2023, after the reply deadline set forth in Order No. 35815 passed, the Company filed a Motion and Supplemental Comments after being informed by the Seller that the Facility’s Maximum Capacity Amount was higher than originally listed. On August 10, 2023, the Commission issued a Notice of Supplemental Comment Deadlines. Order No. 35887. Staff and the Commenters filed supplemental comments to which the Company replied. The Company’s supplemental reply also included a proposed Replacement Second Amendment to the ESA (“Updated ESA”).

With this Order, we approve the proposed Updated ESA, as filed.

BACKGROUND

The Company stated that the Facility is located in Lincoln County, Idaho. The Seller has been delivering energy from the Facility to the Company under a firm energy sales agreement since July 17, 1987 (“1987 FESA”). The Company’s Application stated that the Facility had a 4,770 kilowatt (“kW”) nameplate capacity.

THE APPLICATION

The proposed ESA has a 20-year term with non-levelized, seasonal hydro published avoided cost rates as set in Order No. 35422. Under the proposed ESA, the Seller would receive capacity payments for the entire 20-year term. The Company stated that the Facility produces at least 55% of its annual generation in June, July, and August (“Summer Months”). The Seller informed the Company that it would like the annual period for determining seasonal hydro changed so that each year’s period would start on June 1, and end on May 31 of the following year (“Proposed Calendar”) instead of beginning January 1 and ending on December 31. The Company had no objection with the Seller’s Proposed Calendar

The proposed ESA would adopt a “five-day advanced notice for adjusting Estimated Net Energy Amounts for purposes of complying with 90/110 firmness requirements.” Application at 8. The Company stated that, in compliance with Order Nos. 35705 and 35767, the proposed ESA has revised language under Article XXIII relating to Modifications of the Facility. The Company also requested that the Commission approve the ESA and declare that all payments for the purchase of energy under the ESA are designated as prudently incurred expenses for ratemaking purposes.

INITIAL COMMENTS

a. Staff’s Comments

Staff reviewed the proposed ESA and recommended that all payments for purchases of energy be deemed prudently incurred for ratemaking purposes. Staff also suggested that the Parties update Article XXIII relating to modifications of the ESA. Staff did not oppose the adopting of the Proposed Calendar but recommended that the Parties update the language in the proposed ESA to conform with the Proposed Calendar.

While the original 1987 FESA did not contain rates with capacity payments, Staff noted that the Facility has added capacity since that time. In reviewing the operation of this Facility since the mid-1980s, Staff determined that the Facility should be eligible to receive immediate capacity payments upon the issuance of a Commission order.

Staff reviewed Article XXIII related to modification. Staff believed that the ESA included the appropriate language relating to Facility Modification from Order Nos. 35767 and 45750. However, Staff believed that the ESA did not include a necessary provision regarding modifications to the ESA itself; Staff believed the agreement needed additional provisions within Article XXIII stating that the ESA itself cannot be modified unless there is an agreement that has been signed by the Parties and approved by the Commission.

As noted previously, Staff did not oppose the Parties' request to adjust the measuring year for seasonal hydro rates. Staff noted that the Proposed Calendar would allow a QF to utilize not only September and October—but also provide increased flexibility by more effectively using April and May—to adjust its generation output and to ensure that it produced at least 55% of its generation in the Summer Months.

Staff did not oppose the proposed timeframe because: 1) the current January 1 to December 31 calendar appears to have been chosen simply because the end of the traditional calendar year was convenient for evaluating compliance; 2) the impacts of implementing the Proposed Calendar would be minimal from a resource and operational planning perspective; 3) the reason for the seasonal hydro premium is to serve the Company's greatest need in the Summer Months and the Proposed Calendar decreases the likelihood that the Company will be obligated to purchase unnecessary QF power; 4) the administrative burden of switching to the Proposed Calendar is not significant as the Company's system that measures whether the QF has produced 55% of its power in the Summer Months can adjust for different timeframes; and 5) the Company's accounting systems can be easily adjusted to accurately measure the necessary data relative to the Proposed Calendar.

For those reasons, Staff did not oppose the Proposed Calendar. However, Staff recommended that the Parties update the language of the ESA to accurately reflect 1) the Commission's requirements for modifying the ESA; and 2) the Parties' Proposed Calendar for determining seasonal hydro.

b. Sorenson's and IdaHydro's Comments

The Commenters supported the Commission approving the Proposed Calendar. The Commenters noted their respective interests in the case and then focused on the Commission's treatment of canal drops. They cited Order No. 32737 in explaining that canal drops have higher rates because they provide power at the times of greatest need—peak days and peak hours.

The Commenters noted that to qualify as a canal drop the facility in question must deliver 55% of its power in the Summer Months; however, the calendar year for evaluating this ratio begins on January 1 and ends December 31. Order No. 32802. The Commenters argued that, because a QF does not receive the accounting for August until well into September, there is a period when the seller faces a dilemma of limiting its output in September or risking its canal drop premium. Thus, the seller who is unwilling to risk its canal drop premium has pressure to needlessly generate under its allowable potential in September. The Commenters provided an example where “one canal drop QF produced one day’s too much energy in the month of September prior to receiving the August report, which reduced the 55% to 54.15% production in June, July, and August.” Public Comment No. 1 at 3. The Commenters stated that this cost the seller \$71,036.26—or an approximate 20% drop in the income generated by that QF.

The Commenters also noted that a QF would better know if it had the flexibility to *not* produce at the end of August if that generation could be undesirable to the utility. The Commenters argued that adopting the Proposed Calendar would thus provide sellers with greater foresight and flexibility to ensure that 55% of their generation occurred in the Summer Months.

c. The Company’s Reply

The Company noted Staff’s recommendation regarding the Facility’s eligibility for capacity payments as well as Staff’s non-opposition to the Proposed Calendar. The Company agreed with Staff’s recommendations for the ESA. Accordingly, Attachment 1 to the Company’s reply included the Company’s First Amendment to the ESA with revisions to Article XXIII regarding modifications to the ESA; Attachment 1 also corrected the dates in the proposed ESA to correspond with the Proposed Calendar for determining the measuring timeframe for qualifying seasonal hydro.

THE COMPANY’S MOTION

The Company stated that, shortly after its submission of its initial reply comments, the Seller informed it that the correct Maximum Capacity Amount of the Facility exceeded the Maximum Capacity Amount listed in the Application and proposed ESA. The originally proposed ESA listed the Maximum Capacity Amount at 4,770 kW. However, the Seller stated that the correct Maximum Capacity Amount is 5,050 kW. The Company also provided a proposed Second Amendment to the ESA with a listed Maximum Capacity Amount of 5,050 kW. The Company

also reiterated its request that the Final Order in this case be published before the 1987 FESA expires on August 31, 2023.

SUPPLEMENTAL COMMENTS

a. Staff’s Supplemental Comments

Staff recommended that the Commission allow the Company to choose one of the following two options: 1) approve the Company’s supplemental request and order the Company to update Appendices E and F so that the proposed ESA was consistent in stating that the Facility had a Maximum Capacity Amount of 5,050 kW; or 2) approve a Maximum Capacity Amount of 4,770 kW—as was listed in the 1987 FESA—and ensure that the Second Amendment to the ESA accurately reflects this approved Maximum Capacity Amount.

b. Sorenson’s and IdaHydro’s Supplemental Comments

The Commenters supported the Company’s proposal to update the agreement to reflect a new listed Maximum Capacity Amount for the Facility. The Commenters noted that this would avoid the negative consequences of producing unapproved excess power or unnecessarily limiting the Facility’s output of renewable energy.

c. The Company’s Supplemental Reply Comments

The Company preferred to set the Facility’s Maximum Capacity Amount at 5,050 kW. The Company also filed an Updated ESA which corrected Appendices E and F to reflect the proposed Maximum Capacity Amount of 5,050 kW, consistent with Staff’s first proposed option.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission is empowered 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. *Idaho Code* §§ 61-502 and 61-503. The Commission also has authority under PURPA and Federal Energy Regulatory Commission (“FERC”) regulations to set avoided cost rates, to order electric utilities to enter fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules. The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

The Commission has reviewed the record, including the Application, the Updated ESA, and the various comments submitted in this case. The proposed modifications to the proposed ESA are reasonable and can be supported by clear articulable arguments. The Proposed Calendar is

reasonable in that it gives the Seller more flexibility in maximizing its capacity outside of the Summer Months without risking its seasonal hydro premium. Likewise, approving the Company's proposed Updated ESA so that the Facility's Maximum Capacity Amount is listed at 5,050 kW is reasonable as it allows the Company to utilize the Facility's full potential in meeting its load obligations. The Commission holds that the proposed Updated ESA is approved, as filed.

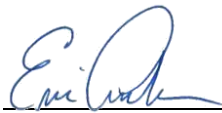
ORDER

IT IS HEREBY ORDERED that the proposed Updated ESA is approved, as filed, effective September 1, 2023.

IT IS FURTHER ORDERED that all payments for purchases of energy under the Updated ESA between the Company and the Seller be allowed as prudently incurred expenses for ratemaking purposes.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this order about any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *Idaho Code* § 61-626.

DONE by order of the Idaho Public Utilities Commission at Boise, Idaho this 31st day of August 2023.



ERIC ANDERSON, PRESIDENT

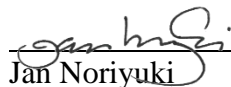


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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