BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER COMPANY'S APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO ACQUIRE RESOURCES TO BE ONLINE IN BOTH 2024 AND 2025 AND FOR APPROVAL OF AN ENERGY STORAGE AGREEMENT WITH KUNA BESS LLC	)	**CASE NO. IPC-E-23-20** **ORDER NO. 36011**

On May 26, 2023, Idaho Power Company ("Company"), filed an application ("Application") with the Idaho Public Utilities Commission ("Commission") requesting an order: (1) granting the Company a Certificate of Public Convenience and Necessity ("CPCN") to acquire a total of 101 megawatts ("MW") of new dispatchable energy storage to meet identified capacity deficiencies in both 2024 and 2025; (2) approving the 20-year Energy Storage Agreement ("ESA") between Kuna BESS LLC ("Kuna BESS" or "Seller") and the Company for 150 MW of dispatchable energy storage capacity; and (3) acknowledging the lease accounting necessary to facilitate the transaction, and that the resulting expenses associated with the ESA are prudently incurred for ratemaking purposes. The Company asserted that approval of the Application was necessary "to position the Company to meet its obligation to provide safe, reliable service to its customers." Application at 2.

The Company represented that several converging factors, including limited third-party transmission capacity, load growth, and a decline in the peak serving effectiveness of certain supply-side and demand-side resources have caused the Company to rapidly move to a near-term capacity deficiency starting in 2023. *Id.* at 5. The Company stated that these dynamic circumstances led the Company to file a request for a CPCN to acquire resources to be online in 2023, as well as a CPCN to acquire resources to be online in 2024, and the Company expected to acquire additional resources each year thereafter through 2027. *Id.*

The Company represented that it must acquire additional dispatchable resources to meet identified capacity deficits on its system to comply with its continuing obligation to serve customers. *Id.* at 3. The Company stated that the proposed acquisition represented a cost-effective means of providing adequate and reliable service to the customers in the Company's certificated service territory. *Id.*

The Company represented that it conducted a competitive solicitation through a Request for Proposals ("RFP") seeking to acquire energy and capacity to help meet the Company's previously identified capacity needs of 85 MW to be online by June of 2024, and an incremental 115 MW in 2025. *Id.* at 6.

The Company represented that the RFP process resulted in the selection of a 150 MW energy storage project, consisting of a 20-year ESA for a 150 MW battery storage facility, 77 MW of Company-owned battery storage to meet the 2025 capacity deficiency, and an additional 24 MW of Company-owned battery storage for the 2024 capacity need. *Id.*

The Company represented that the ESA acts as a type of lease through which Kuna BESS will develop, design, construct, own, and operate the battery storage system in accordance with the terms of the Agreement. *Id.* at 7. The Company stated that it would supply the charging energy for the system and have the exclusive right to dispatch and use the charging and discharging energy in exchange for a monthly payment. *Id.*

The ESA has a Scheduled Commercial Operation Date of June 1, 2025, prior to the Company's projected capacity deficit in July of 2025. *Id.* at 7-8. The ESA also provides for a Guaranteed Commercial Operation Date, which is 180 days after the Scheduled Commercial Operation Date. *Id*. at 8. The ESA also requires Kuna BESS to post and maintain Credit Support which secures payment of the Termination Payment for an Event of Default by Seller, Delay Damages for Seller's failure to achieve Commercial Operation Date by the Expected Commercial Operation Date, and any other Seller liabilities under the ESA. *Id*.

The Company represented that the 77 MW battery storage facility will be located at the Happy Valley station, and that the Company can address the 2024 capacity deficiency economically and efficiently by adding 24 MW of battery storage at the Hemingway substation. *Id.* at 9-10. The Company stated that it intends on executing a Battery Energy Supply Agreement for the 24 MW battery storage with Powin Energy Corporation. *Id.*

The Company represented that it is not requesting binding ratemaking treatment for the 101 MW of battery storage in this case, and that the Company will make a future filing to address the cost recovery associated with these projects. *Id.* at 11-12.

The Company represented that with respect to the ESA, under Generally Accepted Accounting Principles ("GAAP"), any contract that provides the right to control an identified asset over a period of time is considered a capital lease. *Id.* at 12. The Company requested that the Commission acknowledge that the lease accounting is necessary to facilitate the transaction, and that the Commission find that the expenses associated with the ESA are prudently incurred expenses for ratemaking treatment. *Id.* The Company stated that it will address any regulatory accounting necessary and required under GAAP in a later proceeding closer to commencement of operation of the battery storage facility. *Id.*

The Company represented that in 2013, the Commission directed the Company to follow the RFP guidelines applicable to its Oregon service territory, which were later codified into the administrative rules of the Public Utility Commission of Oregon ("OPUC Resource Procurement Rules"). *Id.* at 13-14. The Company stated that coincident to filing this Application, the Company filed an exception request with the OPUC and is currently compliant with the OPUC resource acquisition process. *Id.*

The Company represented that it intends to finance the 101 MW of energy storage with a combination of available cash and operating cash flow; available facilities and borrowing and debt issuances; and potential future equity issuances by IDACORP. *Id.* at 14-15.

STAFF COMMENTS

Staff's review focused on: (1) the capacity deficiency in 2024 and 2025; (2) the RFP process: (3) the turn-key costs of the 24 MW of Battery Energy Storage System ("BESS") capacity; (4) the turn-key costs of the 77 MW of BESS capacity; and (5) the 20-year ESA.

Based on its review, Staff believed that the additional capacity deficiency in 2024 that drove the need for the 24 MW BESS is justified, and that the capacity deficiency in 2025 that drove the need for the 77 MW BESS and the 150 MW ESA is justified. Staff believed that the proposed projects, without the overbuilds, are the least-cost, least-risk projects among all the final shortlisted projects to meet the 2024 and 2025 capacity deficits. Staff based its conclusions on the Long-term Capacity Expansion Model ("LTCE") analysis conducted by the Company.

However, Staff believed that due to the issues associated with the resource selection process, the bid pool could have been larger and there could have been additional final shortlisted projects with lower costs, and Staff recommended a soft cap for the 24 MW BESS and the 77 MW BESS projects, without the capacity and the cost of the overbuilds, as specified in Paragraph 1 and

Paragraph 2 of Staff's Confidential Attachment A, respectively, and that the 150 MW ESA be capped at the contract price established in the Application unless the Company presents evidence that any additional costs are justified when the Company seeks cost recovery.

With respect to the 150 MW ESA, Staff reviewed the terms and provisions, which included a review of the contract price, liquidated damages clauses, and Section 19.3. Based on its review, Staff believed that Section 19.3 of the ESA should be updated to reflect the need for Commission approval before any modification becomes valid. With respect to the account treatment of the 150 MW ESA, Staff agreed that the appropriate way to account for Kuna BESS is as a capital lease, and Staff agreed to address regulatory accounting related to the ESA at a later date closer to the commencement date.

Ultimately, Staff recommended:

1. Approval of the CPCN to acquire 24 MW and 77 MW of BESS capacity to meet the 2024 and 2025 capacity deficiencies, respectively;
2. Setting a soft cap for the turn-key costs of the 24 MW and 77 MW BESS projects at the amounts specified in Paragraph 1 and 2, respectively, of Confidential Attachment A, unless the Company presents sufficient evidence that amounts over the cap are justified when the Company seeks cost recovery;
3. The additional overbuild capacity of 5.8 MW for the 24 MW BESS and the 17.25 MW for the 77 MW BESS be subject to a full prudence review if the Company seeks recovery and after the overbuild capacity becomes used and useful;
4. Declaration that the expenses associated with the ESA, as proposed, are prudently incurred for ratemaking purposes;
5. The Company seek a prudence determination of incremental expenses outside of the contracted prices in the ESA as listed in Exhibit No. 6 of Hackett's Direct Testimony, if any, when the project becomes operational;
6. Approval of the ESA, conditioned on the Parties updating Section 19.3 of the ESA to reflect the significance of Commission approval;
7. Acknowledgement that lease accounting is necessary to facilitate the transaction of the ESA; and
8. The Company address the issues Staff identified in the resource selection process in future RFPs, regardless of whether the Company files an exception with the Oregon Public Utilities Commission ("OPUC").

COMPANY REPLY COMMENTS

The Company replied that the Commission should adopt Staff's recommendation to grant the company a CPCN, declare that the expenses associated with the ESA are prudent, and acknowledge that lease accounting is necessary to facilitate the ESA.

The Company represented that it completed a robust and competitive RFP process for identifying the lease-cost, least-risk resource acquisitions, and the Company indicated that as it gains experience with the development and insurance of RFPs, future RFPs will be refined and become more robust to ensure a continued competitive resource acquisition process.

With respect to the BESS, the Company stated that the overbuild associated with the BESS will be used, useful, and provide benefits to customers as soon as it is placed in service.

With respect to the soft cap, the Company did not believe that a soft cap is necessary, and the Company represented that its evaluation of the proposals received as part of the 2022 RFP considered the costs associated with overbuilds and the resulting selection of the 77 MW and 24 MW BESS were the least-cost resources, of which the entire BESS will be used and useful when placed in service. However, the Company stated that if the Commission found it necessary to implement a soft cap, then the soft cap should apply only to those costs associated with the nameplate capacity of the 24 MW and 77 MW BESS.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over the Company's Application and the issues in this case under Title 61 of the Idaho Code including *Idaho Code* §§ 61-301 through 303. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of all public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provisions of law, and to fix the same by order. *Idaho Code* §§ 61-501 through 503.

1. Necessity of the CPCN

Public utilities shall "furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the health, safety, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable." *Idaho Code* § 61-302.

Before constructing "a line, plant, or system," a public utility providing electrical service must obtain a CPCN from the Commission establishing that the "public convenience and necessity" requires it. *Idaho Code* § 61-526. Pursuant to Idaho Commission Rule of Procedure 112, existing utilities applying for the issuance a CPCN under *Idaho Code* § 61-526 must submit any relevant data including: (1) a Statement and Explanation; (2) a Description of Construction or

Expansion; (3) a Map; (4) a Financial Statement and Construction Timelines; and (5) Cost Estimates and Revenue Requirements.

Having reviewed the Application, the record, the comments of the parties, and all submitted materials, the Commission finds that the Company has satisfied the requirements for a CPCN to acquire 101 MW of new dispatchable energy storage to meet an identified capacity deficiency in 2024 and 2025. *Idaho Code* § 61-526; Rule 112.

2. 20-year ESA with Kuna BESS

The Commission finds it fair, just, and reasonable to approve the 20-year, 150 MW, ESA with Kuna BESS subject to Staff's identified update to Section 19.3. The Commission also finds that proposed expenses associated with the ESA are prudently incurred for ratemaking purposes. However, any incremental expenses beyond the contracted prices in the ESA shall be subject to a prudence determination when the Company seeks recovery. Further, the Commission acknowledges the lease accounting necessary to facilitate the transaction.

3. Soft Cap and Future Recovery

Having reviewed the Application, the record, the comments of the parties, and all submitted materials, the Commission finds that it is fair, just, and reasonable to establish a soft cap for each project's turn-key cost as specified in Paragraphs 1 and 2 of Confidential Attachment A to Staff's comments. The Company may recover above the soft cap for each project if the Company presents sufficient justification for its resource costs when the Company seeks recovery. However, the soft cap amounts, or any amounts under the soft caps, are not guaranteed for recovery as all resource costs are subject to review during recovery proceedings. The additional overbuild capacity shall be subject to a full prudence review when the Company seeks recovery.

While the Company represents that it will fully support and justify all resource costs as part of a future proceeding, the Commission emphasizes the importance of selecting the least-cost, least-risk resources to meet the Company's capacity needs, and the importance of conducting and maintaining thorough and competitive RFPs regardless of the Company's shifting capacity needs.

ORDER

IT IS HEREBY ORDERED that the Company's Application for a Certificate of Public Convenience and Necessity for the acquisition of 101 MW of new dispatchable energy storage to meet an identified capacity deficiency in 2024 and 2025 is granted.

IT IS FURTHER ORDERED that the Commission establishes a soft cap for each project's turn-key cost in the amounts specified in Paragraphs 1 and 2 of Confidential Attachment A to Staff's comments. The additional overbuild capacity shall be subject to a full prudence review when the Company seeks recovery.

IT IS FURTHER ORDERED that the 20-year, 150 MW, ESA with Kuna BESS is approved with Staff's identified update to Section 19.3, and the Company shall submit a compliance filing with the update. The proposed expenses associated with the ESA are prudently incurred for ratemaking purposes, and the Commission acknowledges the lease accounting necessary to facilitate the transaction. Any incremental expenses beyond the contracted prices shall be subject to a later prudence review when the Company seeks recovery.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date upon this Order regarding 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 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 27th day of November 2023.

ERIC ANDERSON, PRESIDENT

JOHN R. HAMMOND JR., COMMISSIONER

EDWARD LODGE, COMMISSIONER

ATTEST:

Monica Barrios-Sanchez
Interim Commission Secretary

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