

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ROCKY MOUNTAIN) CASE NO. PAC-E-22-08
POWER’S APPLICATION FOR APPROVAL)
OR REJECTION OF THE POWER)
PURCHASE AGREEMENT WITH AMY) ORDER NO. 35506
FAMILY HOLDINGS, LLC.)
)

On May 18, 2022, PacifiCorp d/b/a Rocky Mountain Power (“Company”) applied to the Idaho Public Utilities Commission (“Commission”) for an order approving or rejecting a Power Purchase Agreement (“PPA”) between the Company and Amy Family Holdings, LLC. (“Seller”) (collectively, the “Parties”) for energy generated by the Bell Mountain Hydro Project (“Facility”)—a qualifying facility (“QF”)—and a declaration that the avoided cost prices are just and reasonable. The Company requested that its Application be processed by Modified Procedure.

On June 16, 2022, the Commission issued a Notice of Application and Notice of Modified Procedure setting public comment and Company reply deadlines.

At the Commission’s July 12, 2022 Decision Meeting, Commission Staff (“Staff”) recommended vacating the public comment and reply comment deadlines, and establishing a new 14-day public comment and 21-day Company reply comment deadline, to allow the Company to submit the amended agreement required under Case No. PAC-E-20-18. On July 15, 2022, the Commission vacated the comment deadlines and issued amended comment deadlines. The Commission also approved the amended agreement required under Case No. PAC-E-20-18.

On July 29, 2022, Staff filed comments recommending several changes to the Parties’ Amended PPA. On August 3, 2022, the Company filed reply comments. The Company agreed with Staff’s recommended changes but proposed different language intended to reach the same result. *Company’s Reply* at 3.

No public comments were submitted.

The Commission now issues this Order approving the PPA.

THE APPLICATION

The parties’ original agreement was signed on January 3, 1985. Before its expiration, the Commission granted a one-year extension of the 1985 agreement to allow the Seller to complete interconnection requirements prior to the contract expiration date of December 31, 2021. Order

No. 35262. The Company represents that the Seller has completed the necessary upgrades, and that the 650-kilowatt nameplate capacity facility remains a QF that will generate no more than 0.65 average megawatt (“aMW”) in any calendar month, with an estimated yearly output of net 1,718 megawatt-hours. *Application* at 3.

Under the proposed PPA, the Seller would sell net delivered output to the Company at the rates described in Exhibit K “Schedule 38 and Pricing Summary Table” and as described in Section 5.1 “Contract Price; Costs.” *PPA* at 19-20; Exhibit K. The PPA provides that it is conditioned upon Commission approval and a determination that the prices paid for power delivered are just and reasonable, in the public interest, and that the costs are legitimate expenses. *PPA* at 10, § 2.1.

STAFF COMMENTS

Staff reviewed the Company’s Application and Exhibits A-L and recommended approval, if the following amendments were made to the Amended PPA: (1) replace “January 1, 2022”- with “January 1, 2023” in Exhibit K; (2) replace “January 1, 2022” with “January 1, 2023” in the definition of Contract Year on Page 2 of the PPA; (3) replace “January 1, 2022” with “January 1, 2023” in the definition of Scheduled Initial Delivery Date on Page 8 of the PPA; (4) replace “July 1, 2022” with “July 1, 2023” in Section 11.2.4 (Remedy for Seller’s Failure to Achieve Timely Initial Delivery Date) on Page 30 of the PPA; (5) update Section 21 of the PPA to ensure that any modification does not become valid without Commission authorization; and, (6) include detailed provisions to adequately address potential modifications to the Facility.

With respect to Staff recommendation No. 5, Staff proposed replacing “[n]o modification of this Agreement is effective unless it is in writing and executed by both Parties” in Section 21 of the PPA with “No modification of this Agreement is effective unless it is in writing and executed by both Parties and *subsequently approved by the Commission.*” *Staff Comments* at 4.

With respect to Staff recommendation No. 6, Staff noted that the Parties included language that “[n]o modification of this Agreement is effective unless it is in writing and executed by both Parties,” but thought that the Parties could consider including modification provisions addressing nameplate capacity changes, generation output changes, QF categories (Small Power Production Facilities vs. Cogeneration Facilities), changes to the primary energy sources (non-seasonal hydro, seasonal-hydro, wind, solar, and others), and changes to the generator fuel (which could lead to the options of Fueled rates versus Non-Fueled Rates). *Staff Comments* at 4-5. Staff noted that there are generally two types of modifications—the first being modifications from the planned facility

to the completed facility project, and the second being modifications that occur subsequent to the as-built facility. For the first category of modifications, the Commission requires QFs to submit “as built” descriptions of their facilities by the first operation date, and contracts are expected to reflect an accurate facility description. For the second category, Staff acknowledged that the parties could include all major modifications from the “as-built” description that would trigger the need for submitting an amended contract for Commission approval. The parties can include an “as built” description in a contract with a provision that major modifications from the “as built” description will trigger the need for contract amendment and Commission approval. Because the PPA already includes an as-built description, Staff recommended adding provisions that (1) require the Seller to promptly notify the Company of modifications to the as-built description; (2) require the Seller to describe any planned modifications, i.e., fuel change or capacity size; (3) language that Commission-approved rates might not apply to the modified facility, and that any amendment would need Commission approval; (4) language that the Company is not required to purchase the output of the modified facility, even if the modified facility qualifies as a single “QF” under FERC regulations, and that the Parties may enter into a new agreement to address energy from the additional facility; (5) language that deviations from the proposed modifications would require contract amendment and Commission approval; and (6) a provision that the Seller is in default for failing to adhere to any of the above provisions. *Staff Comments* at 5-6.

COMPANY COMMENTS

On August 3, 2022, the Company filed its reply comments. The Company agreed to make the suggested changes from Staff’s recommendations 1-4. *Reply* at 1. To address Staff’s concerns about modifications (Staff recommendation 5), the Company proposed additional language in Section 21 of the PPA to state that: “Material changes to the Agreement shall not go into effect until after approval by the Commission.” *Id.* at 3.

The Company agrees with Staff that modifications to an approved facility, particularly those that change the output of the facility, could be problematic. As a result of these concerns, the Company feels that it has addressed these issues in the enumerated seller defaults. Because the Seller’s default would trigger Company notification, the Company would then be able to negotiate with the Seller on how to address a hypothetical increase in capacity. The Company believes that its’ changes would effectuate the same result as Staff’s proposed language.

COMMISSION DISCUSSION AND FINDINGS

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-501, -502, and -503. *Idaho Code* § 61-501 authorizes the Commission to “supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the [Public Utilities Law].” 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 -503. In addition, the Commission has authority under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and Federal Energy Regulatory Commission (“FERC”) regulations to set avoided costs, to order electric utilities to enter fixed-term obligations for the purchase of energy and capacity from qualifying facilities, 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 Company’s Application, Staff’s comments, and the Company’s reply comments. With respect to Section 21 of the PPA, we remain persuaded that the statement should be updated consistent with Staff’s recommendations to reflect the significance of Commission approval. The Company could accomplish this by replacing “[n]o modification of this Agreement is effective unless it is in writing and executed by both Parties” in Section 21 of the PPA with “No modification of this Agreement is effective unless it is in writing and executed by both Parties and subsequently approved by the Commission.”

We understand that the Company agrees with Staff’s recommendations in principle but would like to address the concerns with a general statement about material changes and rely on the PPA’s default provisions. For consistency and clarity, the Commission is persuaded that the PPA should include the following from Staff’s recommendation No. 6:

1. Language that restricts the Seller from modifying the Facility from the as-built description of the Facility included in Exhibit B, without promptly notifying the Company of that intent.
2. Language that requires the Seller to provide notification of planned modifications (such as fuel change or capacity size change) to the as-built description.
3. Language that the Parties will need to amend the contract again to reflect the actual modification and seek approval from the Commission if the actual modification deviates from the proposed modification.

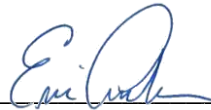
With the aforementioned changes incorporated in an amended PPA to be submitted to the Commission, and recognizing the substantial incorporation of Staff's recommendations, we find it to be fair, just, and reasonable to approve the Company's PPA.

ORDER

IT IS HEREBY ORDERED that the Parties' PPA is approved, provided the Parties update the PPA as described above. The Parties are directed to provide the Commission with an updated PPA as a compliance filing within fifteen (15) days of this Order being issued.

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 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.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19th day of August 2022.



ERIC ANDERSON, PRESIDENT

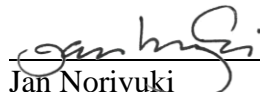


JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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