

## DECISION MEMORANDUM

**TO:** COMMISSIONER KJELLANDER  
COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSION SECRETARY  
COMMISSION STAFF

**FROM:** KRISTINE SASSER  
DEPUTY ATTORNEY GENERAL

**DATE:** AUGUST 21, 2014

**SUBJECT:** IDAHO POWER'S APPLICATION FOR AMENDMENT OF AN AGREEMENT WITH UNITED MATERIALS OF GREAT FALLS, CASE NO. IPC-E-14-21

Idaho Power filed an Application with the Commission on July 31, 2014, requesting that the Commission issue an Order accepting or rejecting the First Amendment to its Firm Energy Sales Agreement (FESA, Agreement) with United Materials of Great Falls, Inc. Idaho Power requested that its Application be processed by Modified Procedure.

### THE APPLICATION

Idaho Power and United Material entered into a Firm Energy Sales Agreement (FESA, Agreement) pursuant to PURPA on January 6, 2004, for the purchase and sale of energy produced by United Material's Horseshoe Bend Wind Park facility. The facility is a 9 MW PURPA wind generation qualifying facility (QF) located at United Material's industrial facility near Great Falls, Montana. This Agreement is the first wind energy sales agreement executed by Idaho Power and was approved by the Commission on April 23, 2004. Order No. 29479.

The Agreement contains 90/110 firmness requirements that apply a "Market Energy Cost" price to energy deliveries that do not meet the 90/110 requirements. The FESA defines Market Energy Cost with reference to the Dow Jones Mid-Columbia Index prices for non-firm energy. Idaho Power states that the Agreement's provisions for Surplus Energy and Market Energy Cost generally correlate to Idaho Power's Schedule 86, Cogeneration and Small Power Production Non-Firm Energy.

The Dow Jones Mid-Columbia Index was discontinued by the publisher as of October 2013. Case No. IPC-E-13-25 was initiated to address a replacement market index reference for

the non-firm energy price utilized in Idaho Power's Schedule 86. The parties to IPC-E-13-25 executed a settlement stipulation, approved by the Commission in Order No. 33053, which sets forth reference to the Intercontinental Exchange (ICE) Mid-Columbia index prices, with a revised formula for calculating the non-firm price in Schedule 86. In addition, the parties to IPC-E-13-25 agreed to amend the FESAs between Idaho Power and each intervening party to reference the ICE index using the same language as, and consistent with, the Schedule 86 language agreed upon in the Stipulation. In approving the Stipulation, the Commission stated "We also find it reasonable to allow any additional existing PURPA QFs that currently have a contract with Idaho Power containing reference to the Dow Jones non-firm Mid-C electricity price index, should they so choose, to amend their respective agreements consistent with the terms of this Settlement Stipulation and similar to the contract amendments approved by this Order." Order No. 33053 at 4.

Subsequent to the issuance of such Order, Idaho Power and United Materials have agreed to amend their FESA to include the reference to the ICE index and revised formula that was adopted for Schedule 86 in Case No. IPC-E-13-25. The Amendment sets forth, virtually verbatim, the provisions from Schedule 86 to define "Market Energy Cost" in Article 1, Section 1.1.3 of the Agreement. The Amendment was executed between the parties on June 24, 2014.

Prior to executing the Amendment, Idaho Power and United Materials entered into a letter agreement agreeing to settle disputed claims regarding the FESA by entering into the Amendment to replace the Dow Jones index with the ICE index. Pursuant to the parties' agreement, and pursuant to the FESA which requires both parties to agree upon a replacement index should the Dow Jones index be discontinued, an effective date of October 2013 for use of the ICE index and calculation referenced in the Amendment is requested. Idaho Power explains that this would provide for use of the agreed upon ICE index from the time the Dow Jones index was discontinued.

#### **STAFF RECOMMENDATION**

Staff has reviewed Idaho Power's Application, the First Amendment to the Agreement between Idaho Power and United Materials, and Case No. IPC-E-13-25. Prior to the filing of the 13-25 case, McGraw Hill Financial, the publisher of both the Dow Jones and Platts indices, provided notice to Idaho Power that it was discontinuing publication of the Dow Jones non-firm index and transitioning to use of the Platts non-firm index. Idaho Power's Schedule 86

and a number of power purchase/energy sales agreements (PPAs) contain language with reference to the Dow Jones Mid-C in determining an “Market Energy Cost.” The pertinent PPAs state that, “If the Dow Jones Mid-Columbia Index price is discontinued by the reporting agency, both Parties [to the contract] will mutually agree upon a replacement index, which is similar to the Dow Jones Mid-Columbia Index.”

The parties to the 13-25 case entered into a settlement stipulation that agreed to an acceptable substitution for the discontinued Dow Jones index – to be applied to both Idaho Power’s Schedule 86 and the power purchase/energy sales agreements of QFs who were parties in the 13-25 case. The settlement stipulation also stated that

The Parties jointly recommend to the Commission that it allow any existing PURPA qualifying facility (“QF”) that currently has a contract with Idaho Power containing reference to the Dow Jones non-firm Mid-C electricity price index to amend their respective FESAs consistent with the terms agreed to in this Settlement Stipulation and similar to the contract amendments submitted for approval herewith between Idaho Power and the intervening parties, should they choose to do so.

The Commission approved the settlement stipulation by Order No. 33053 and specifically stated “We also find it reasonable to allow any additional existing PURPA QFs that currently have a contract with Idaho Power containing reference to the Dow Jones non-firm Mid-C electricity price index, should they so choose, to amend their respective agreements consistent with the terms of this Settlement Stipulation and similar to the contract amendments approved by this Order.” Order No. 33053 at 4.

United Materials is the first QF to request an amendment based on the Commission’s findings in Case No. IPC-E-13-25. Staff anticipates that this filing is the first of several by similarly situated QFs who will choose to amend their agreements. Staff believes that the requested Amendment is consistent with the terms and conditions approved by the Commission in Order No. 33053. Therefore, Staff recommends that the Commission approve the proposed Amendment. Based on the Commission’s determination of reasonableness in IPC-E-13-25 to the definition of “Market Energy Cost” and change in index, and because the Commission already deemed it reasonable for “any additional existing PURPA QFs” to amend their respective agreements with similar terms, Staff further recommends that the Commission approve the First Amendment without further process.

**COMMISSION DECISION**

Does the Commission wish to approve the First Amendment to the Agreement between Idaho Power and United Materials of Great Falls without further process?

  
\_\_\_\_\_  
Kristine A. Sasser  
Deputy Attorney General

M:IPC-E-14-21\_ks