

DECISION MEMORANDUM

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

**FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL**

DATE: NOVEMBER 7, 2014

**SUBJECT: IDAHO POWER'S APPLICATION FOR APPROVAL OF FIRM
ENERGY SALES AGREEMENT AMENDMENTS, CASE NO. IPC-E-14-
37**

Idaho Power filed an Application with the Commission on October 28, 2014, requesting that the Commission issue an Order approving amendments to various Firm Energy Sales Agreements (FESAs, Agreements) between Idaho Power and PURPA qualifying facilities (QFs). Idaho Power states that these amendments are virtually identical, and address the same issue as that submitted and approved as part of the settlement stipulation in Case No. IPC-E-13-25, and the approved amendment in Case No. IPC-E-14-21.

THE APPLICATION

Idaho Power has executed 12 individual amendments to existing Agreements with 12 different QFs. The QFs are as follows:

AgPower Jerome, LLC	contract approved on 12/16/10 by Order No. 32138
AgPower DCD, LLC	contract approved on 4/1/10 by Order No. 31034
Cargill, Incorporated	contract approved on 7/1/10 by Order No. 32024
J.M. Miller Enterprises, Inc.	contract approved on 1/13/11 by Order No. 32159
Twin Falls Energy Co., Inc.	contract approved on 9/8/05 by Order No. 29863
Bannock County, Idaho	contract approved on 2/25/14 by Order No. 32986
DF-AP #1, LLC	contract approved on 7/30/08 by Order No. 30608
Fossil Gulch Wind Park, LLC	contract approved on 11/12/04 by Order No. 29630
New Energy One, LLC	contract approved on 7/1/10 by Order No. 32025
Riverside Hydro I, LLC	contract approved on 6/30/06 by Order No. 30088
Riverside Investments, LLC	contract approved on 2/1/12 by Order No. 32451
Riverside Investments, LLC	contract approved on 4/22/10 by Order No. 31060

The Agreements contain 90/110 firmness requirements that apply a “Market Energy Cost” price to energy deliveries that do not meet the 90/ 110 requirements. The FESAs define Market Energy Cost with reference to the Dow Jones Mid-Columbia Index prices for non-firm energy. Idaho Power states that the Agreements’ 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.

Idaho Power and each QF have agreed to amend their FESAs 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 Amendments set forth, virtually verbatim, the provisions from Schedule 86 to define “Market Energy Cost” and/or “Mid-Columbia Market Energy Cost” as appropriate for each Agreement.

Pursuant to the FESAs which require 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 Amendments 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 Amendments to the Agreements, 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 "Avoided 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.

Staff believes that the requested Amendments are consistent with the terms and conditions approved by the Commission in Order No. 33053. Therefore, Staff recommends that the Commission approve the proposed Amendments. Based on the Commission's determination of reasonableness in IPC-E-13-25 to the definition of "Avoided 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 Amendments without further process.

COMMISSION DECISION

Does the Commission wish to approve the 12 Amendments to the above-mentioned agreements without further process?

Kristine A. Sasser

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Deputy Attorney General

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