

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF IDAHO POWER COMPANY FOR A ) CASE NO. IPC-E-11-25**  
**DETERMINATION REGARDING ITS )**  
**FIRM ENERGY SALES AGREEMENT )**  
**WITH DYNAMIS ENERGY, LLC. ) ORDER NO. 32470**  
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On November 22, 2011, Idaho Power Company filed an Application with the Commission requesting acceptance or rejection of a 20-year Firm Energy Sales Agreement (Agreement) between Idaho Power and Dynamis Energy, LLC (Dynamis Energy) dated November 16, 2011. The Application states that Dynamis Energy would sell and Idaho Power would purchase electric energy generated by the Dynamis Ada County Landfill project (Facility) located near Boise, Idaho. Idaho Power requested that its Application be processed by Modified Procedure.

On December 15, 2011, the Commission issued a Notice of Application/Notice of Modified Procedure and established comment deadlines. Order No. 32413. Staff and Dynamis Energy filed comments. Numerous public comments were also received. By this Order, the Commission approves the Agreement, as filed, between Idaho Power and Dynamis for the sale and purchase of electric energy.

**THE AGREEMENT**

The Application states that Dynamis proposes to own, operate and maintain a 22 MW (maximum capacity, nameplate) landfill waste to energy generating facility. Application at 2. The Facility will be a QF under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Agreement is for a term of 20 years and contains avoided cost rates calculated through the use of the Integrated Resource Plan (IRP) methodology. Idaho Power notes that the energy price identified by the IRP methodology for this Facility is equivalent to a 20-year levelized price of \$92.35 per MWh.<sup>1</sup> Application at 5. The Agreement includes shared ownership of the Renewable Energy Certificates (RECs) generated over the 20-year term of the Agreement. *Id.* at 3.

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<sup>1</sup> The actual energy pricing stream varies throughout the term of the contract based upon the time of year and time of day during which the energy is delivered to Idaho Power.

Dynamis Energy selected October 15, 2013, as its Scheduled First Energy Date and February 14, 2014, as its Scheduled Operation Date. *Id.* Idaho Power asserts that various requirements have been placed upon the Facility in order for Idaho Power to accept the Facility's energy deliveries. Idaho Power states that it will monitor the Facility's compliance with initial and ongoing requirements through the term of the Agreement.

The Application maintains that all applicable interconnection charges and monthly operation or maintenance charges under Schedule 72 will be assessed to Dynamis Energy. Idaho Power states that the Facility is currently in the generator interconnection process. "Upon resolution of any and all upgrades required to acquire transmission capacity for this Facility's generation, and upon execution of the FESA and the GIA, this Facility may then be designated as a network resource." *Id.* at 5. Dynamis Energy and Idaho Power have agreed to liquidated damage and security provisions. Agreement ¶¶ 5.3, 5.8.1.

Idaho Power states that the Facility has also been made aware of and accepted the provisions in the Agreement and Idaho Power's approved Schedule 72 regarding non-compensated curtailment or disconnection of its Facility should certain operating conditions develop on Idaho Power's system. The Application notes that the parties' intent and understanding is that "non-compensated curtailment would be exercised when the generation being provided by the Facility in certain operating conditions exceeds or approaches the minimum load levels of [Idaho Power's] system such that it may have a detrimental effect upon [Idaho Power's] ability to manage its thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system." Application at 6-7.

By its own terms, the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declares that all payments made by Idaho Power to Dynamis Energy for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreement ¶ 21.1.

## COMMENTS

### *Staff Comments*

The Agreement presented for Commission approval contains rates, terms and conditions that differ considerably from those in recent power sales agreements wherein rates were based on *published* avoided cost rates. Staff noted that, in this Agreement, an assortment of methods has been used to determine the rates. Energy rates have been computed using an IRP

methodology, and a capacity component to the rates has been computed using a new methodology not yet thoroughly scrutinized. The Agreement contains non-levelized avoided cost rates that escalate annually from 2014 through the end of the contract term in 2034. The rates are specified by month for both heavy and light load hours. Staff maintains that the rates in this Agreement appear high in comparison to both published rates and to rates contained in recent other PURPA contracts with IRP-based rates. The higher rates in the Dynamis Agreement can be attributed primarily to (1) the Facility delivering energy during heavy load hours when energy is substantially more valuable and (2) the expectation that 100% of the Facility's capacity will be available during Idaho Power's peak load hours in the summer.

In the current case, Idaho Power has made assumptions and employed computational methods it believes are reasonable and within the bounds of the IRP methodology. However, in several instances, Staff recommended different assumptions and calculations. First, Idaho Power uses the capacity cost of a combined-cycle combustion turbine (CCCT) as the basis for computing capacity value of the QF. The underlying assumption in calculating capacity value is that, but for the addition of the new PUPRA QF, a CCCT would otherwise be built to provide capacity. The CCCT is assumed to be added in the same year that the PURPA QF goes on-line. In its analysis in this case, Idaho Power based its calculation of capacity value on the capital cost of a CCCT constructed in 2012, not in 2014 when Dynamis Energy's Scheduled Operation Date occurs. Staff maintains that the capital cost of the CCCT should be inflated by two years to 2014. Staff calculated that the effect of this correction would be an increase in avoided cost rates of approximately \$1 per MWh in each year of the Agreement.

Second, to calculate the value of the energy component of the prices in the Agreement, Idaho Power modeled expected generation from the Facility using the AURORA electric price forecasting model. The Company assumed that the prices generated by the model reflected the costs of energy only, and that no capacity value was reflected in the prices. This assumption reasons that AURORA, when not run in a capacity expansion mode, is strictly a dispatch model that considers only the variable cost of operating resources. The opposing argument is that the marginal energy prices generated by AURORA permit resources to recover at least some fixed costs whenever they are not operating on the margin. Staff maintains that Idaho Power's assumption that AURORA prices reflect only the value of energy is a

conservative one in favor of Dynamis Energy. Staff believes that there is, in fact, some capacity value contained in AURORA prices.

Third, Staff states that the method used by Idaho Power to calculate the capacity component of the prices in the Agreement fails to recognize whether and when Idaho Power actually has a need for new capacity. Under Idaho Power's approach, capacity value is added to the prices from the beginning of the Agreement's term through its entire duration. However, Idaho Power's 2009 IRP does not show a capacity deficit until the year 2013. Staff argues that a method needs to be devised and deployed to recognize the need for new capacity (or lack thereof) in the computation of contract prices.

Fourth, Staff noted that, in its analysis to compute the rates included in the Agreement, Idaho Power used a weighted cost of capital of 7%. This is the same weighted cost of capital that the Company used in preparing its 2009 IRP. Staff believes that a more appropriate weighted cost of capital is 7.86%, the weighted cost of capital from Idaho Power's last general rate case (IPC-E-11-08). If a weighted cost of capital of 7.86% were used instead of 7%, the avoided cost rates computed by Idaho Power would be lowered slightly.

Fifth, for the last five years of the Agreement, Idaho Power estimated the avoided cost rates rather than computing them. Idaho Power's AURORA simulations from the 2009 IRP only extended through 2029, therefore, rates beyond 2029 could not be based exactly on AURORA. To derive rates beyond 2029, Idaho Power simply extrapolated the rates from the prior year using a 3% escalation rate. Staff suggested that a more appropriate approach would be to extend the years over which the AURORA modeling is conducted in order to capture energy prices over the full term of the Agreement.

Finally, Staff noted several typographical errors in the Agreement. Appendix C of the Agreement includes several forms that refer to a 15-year contract length. Idaho Power's Agreement with Dynamis is a 20-year contract.

Pursuant to PURPA and FERC regulations, avoided costs paid to QFs are not to exceed the incremental cost that the utility would incur if it generated the energy/capacity itself or purchased from another source. Staff recommended that the Commission not approve the Agreement between Idaho Power and Dynamis because Staff does not believe that the rates contained in the Agreement are an accurate reflection of Idaho Power's avoided costs.

### ***Dynamis Reply Comments***

Dynamis requests that, despite Staff’s discovery of a calculation error that would result in an upward adjustment of the avoided cost rate paid to Dynamis by Idaho Power, the Commission approve the Agreement as submitted and agreed to by the contracting parties. Dynamis maintains that several of Staff’s recommended adjustments are either not immediately quantifiable or would have a minor impact on the stated avoided cost rates. Dynamis asserts that, “there is a possibility, if not a likelihood, that all [Staff’s recommended] rate adjustments, taken together, would result in an avoided cost rate increase for Dynamis. Dynamis is not interested in a rate increase however, and explicitly waives any right or claim to its full avoided cost.” Reply at 3.

Dynamis states that Staff’s “belated critique” of the terms of the Agreement creates a chilling effect for “any future arms-length negotiations of large QF projects” and is inconsistent with the Commission’s directive to utilities to negotiate contract terms for larger QF projects. *Id.* at 4. Moreover, Dynamis claims that its Agreement with Idaho Power represents the product of mutual negotiations and contains acceptable contract provisions that are just and reasonable. *Id.* at 5. Dynamis insists that the values and assumptions used in calculating its avoided cost rate fall within a “reasonable range” and are fair to Idaho Power’s ratepayers. *Id.*

### ***Public Comments***

More than 25 public comments were received regarding the Agreement between Idaho Power and Dynamis. Approximately 16 commenters oppose approval of the Agreement. Opposition to the project is primarily focused on the viability of the technology that Dynamis seeks to utilize. Commenters also believe that the cost of the energy that will be paid by Idaho Power to Dynamis is excessive. Several commenters request an “open meeting” in order to provide “public comment” on the issues.

Approximately 11 comments were submitted by persons who support the project. Supporters maintain that the technology is proven and the project is good for the environment and the local economy. Supporters ask that the Commission approve the Agreement and allow the project to move forward.

## **FINDINGS AND CONCLUSIONS**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power, an electric utility, and the issues raised in this matter pursuant to the authority and power granted it under

Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities (QFs) and to implement FERC rules.

The Commission has reviewed the record in this case, including the Application, the Agreement, the comments of Commission Staff, reply of Dynamis, and public comments. First, we address the requests for an “open meeting” or hearing on this matter. The Commission’s Rules of Procedure allow for the use of Modified Procedure, i.e., the consideration of issues based on written submissions (comments) rather than by hearing. Rule 201, IDAPA 31.01.01.201. If a hearing is requested, the Commission, in its discretion, may deny the request for hearing and issue its Order on the basis of the written positions before it so long as the disputes may be adequately resolved by the written submissions. *See* Rule 204, IDAPA 31.01.01.204; *Amador Stage Lines, Inc. v. United States and Interstate Commerce Comm.*, 685 F.2d 333, 335 (9<sup>th</sup> Cir. 1982); *American Public Gas Asso. v. Federal Power Comm.*, 162 U.S.App.D.C. 176, 498 F.2d 718 (1974).

In this case, the public took full advantage of the opportunity to provide written comments both in support of and opposition to the Agreement between Idaho Power and Dynamis. The evidentiary record amply reflects the positions of all persons and parties. Moreover, no one has alleged that their position cannot be adequately presented through written submissions. We find that the parties and numerous commenters adequately developed the record in this proceeding. Additional process in the form of a hearing would be redundant. Consequently, requests for an open meeting and/or hearing are denied.

Next, we address the public commenters concerned about the risk that they believe this Agreement poses to ratepayers and taxpayers. Pursuant to PURPA and FERC regulations, Idaho Power is required under PURPA to offer to purchase a project’s output, regardless of the technology, as long as the project meets the requirements of a qualifying facility. 18 C.F.R. §292.303(a). This Commission’s review is focused on whether the Agreement meets the requirements of PURPA, FERC, and State rules pertaining to the purchase of energy by a regulated utility from a QF. Consideration of Ada County’s role in this Project is outside our

authority. We take no position on the commenters' expressed frustration with Ada County's processes and decision making regarding this Project.

All power purchase agreements reviewed and approved by this Commission contain provisions to protect ratepayers if the project fails to perform. Most of the terms have become standard in PURPA contracts. Significantly, no payments are made by Idaho Power to Dynamis unless energy is delivered. The Agreement also provides for liquidated damages should Dynamis fail to bring the Facility on-line by its Scheduled Operation Date (February 14, 2014). Pursuant to the terms of the Agreement, failure to be on-line within 90 days of the Scheduled Operation Date qualifies as a material breach and would allow Idaho Power to terminate the contract. Agreement at ¶¶ 5.3-5.6, ¶ 5.8.1.

Moreover, the Agreement contains minimum generation requirements that must be met by Dynamis. Reduced energy prices apply for short-term failures to meet minimum generation requirements. Agreement at ¶¶ 6.3-6.4. Surplus energy (energy produced that is more than 110% of the hourly amounts specified in the Agreement) is also priced lower. Agreement at ¶¶ 1.38 and 7.4. The Agreement also includes minimum insurance requirements for Dynamis.

Finally, Dynamis has agreed to Idaho Power's Schedule 72 non-compensated curtailment and disconnection provisions if certain operating conditions exist. Application at 6-7. The Agreement also contains other standard terms and conditions intended to protect Idaho Power and its ratepayers regarding indemnification (¶ 13.1), force majeure (¶ 14.1), liability (¶ 15.1), and disputes/default (¶ 19.1). These provisions eliminate any adverse impact to ratepayers or Idaho Power regarding the technology.

Consequently, and based on the record, we find that the proposed Agreement submitted in this case contains acceptable contract provisions including the non-levelized avoided cost rates calculated through the use of the IRP methodology. We find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes. Despite Staff's discovery of a calculation error that would increase the avoided cost rates paid to Dynamis by Idaho Power, Dynamis requests approval of the Agreement as submitted and explicitly waives any right or claim to an upward adjustment to the avoided cost. As such, we find it is in the best interest of the parties and the ratepayers to approve the Agreement with the avoided cost rates currently contained in the Agreement. We also direct

Idaho Power to re-submit the forms contained within Appendix C to the Agreement to reflect the actual 20-year term of the Agreement (Operation and Maintenance Policy, Ongoing Operation and Maintenance, and Design and Construction Adequacy forms).

We appreciate Staff's thorough and independent review of every power purchase agreement that is filed for approval with this Commission. Contrary to Dynamis' assertions that Staff's "belated" review creates a chilling effect for arms-length negotiations of future QF projects, we find it is Staff's responsibility to perform a detailed review of each contract. We anticipate full consideration of possible changes to the implementation of the IRP methodology within the context of the generic PURPA docket currently before the Commission. *See* GNR-E-11-03.

### **ORDER**

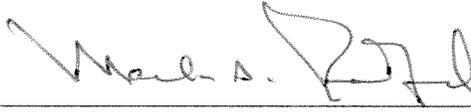
IT IS HEREBY ORDERED that the November 16, 2011, Firm Energy Sales Agreement between Idaho Power Company and Dynamis Energy, LLC is approved. Idaho Power is directed to re-submit forms contained within Appendix C to the Agreement within fourteen (14) days from the date of this Order to reflect the actual 20-year term of the Agreement.

IT IS FURTHER ORDERED that the requests for a hearing are denied.

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. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

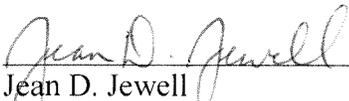
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24<sup>th</sup>  
day of February 2012.

  
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PAUL KJELLANDER, PRESIDENT

  
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MACK A. REDFORD, COMMISSIONER

  
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MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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