

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF) CASE NO. IPC-E-17-01
IDAHO POWER COMPANY FOR A)
DECLARATORY ORDER REGARDING) NOTICE OF PETITION FOR
PROPER CONTRACT TERMS,) DECLARATORY ORDER
CONDITIONS, AND AVOIDED COST)
PRICING FOR BATTERY STORAGE) NOTICE OF
FACILITIES) MODIFIED PROCEDURE
)
) ORDER NO. 33729

On February 27, 2017, Idaho Power Company petitioned the Commission for a declaratory order regarding proper contract terms, conditions, and avoided cost pricing for battery storage facilities under the Public Utility Regulatory Policies Act of 1978 (PURPA). The Company states that it has received requests from developers of proposed battery storage facilities claiming they are entitled to published avoided cost rates under PURPA with a 20-year contract term. The Company asks the Commission to issue a declaratory order directing that proposed battery storage facilities with a maximum nameplate capacity of 100 kW are entitled to published avoided cost rates and a maximum 20-year contract term. The Company also asks the Commission to direct that proposed battery storage facilities with a nameplate capacity exceeding 100 kW are eligible for negotiated avoided cost rates under the Integrated Resource Plan methodology (rather than published rates), and a maximum two-year contract term.

The Commission now issues this Notice of the Petition and Notice of Modified Procedure, setting deadlines for comments from the developers of the proposed projects at issue, affected utilities, any interested persons, and the Company.

BACKGROUND

PURPA was passed as part of the National Energy Act of 1978. The Act's goals include the encouragement of electric energy conservation, efficient use of resources by electric utilities, and equitable retail rates for electric consumers, as well as the improvement of electric service reliability. 16 U.S.C. § 2601 (Findings). Under the Act, the Federal Energy Regulatory Commission (FERC) prescribes rules for PURPA's implementation, and state regulatory authorities such as this Commission implement FERC's rules. 16 U.S.C. § 824a-3(a), (b); *Idaho*

Power Company v. Idaho Pub. Util. Comm., 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013) (citing *F.E.R.C. v. Mississippi*, 456 U.S. 742, 751 (1982)) (state regulatory authorities have “discretion in determining the manner in which the rules will be implemented”).

PURPA requires electric utilities, unless otherwise exempted, to purchase electric energy from “qualifying facilities” (QFs) as defined under the Act. 16 U.S.C. § 824a-3; *see also* 18 C.F.R. § 292.101, 292.303(a). In Idaho, the Commission must approve the purchase rate¹ in a utility’s contract to buy QF energy under PURPA. *Idaho Power*, 155 Idaho at 789, 316 P.3d at 1287. PURPA and FERC’s implementing regulations are silent with regard to contract term, thus the length of the purchase contract is left to the Idaho Commission’s discretion. *See Afton Energy, Inc. v. Idaho Power*, 107 Idaho 781, 785-86, 693 P.2d 427, 431-32 (1984); *Idaho Power*, 155 Idaho at 782, 316 P.3d at 1280

This Commission has established two methods of calculating avoided cost, depending on the size of the QF project: (1) the surrogate avoided resource (SAR) methodology, and (2) the integrated resource plan (IRP) methodology. *See* Order No. 32697 at 7-8. The Commission uses the SAR methodology to establish what is commonly referred to as “published” or standard avoided cost rates. *Id.*; 18 C.F.R. § 292,304(c). Published rates are available for wind and solar QFs with a design capacity of up to 100 kilowatts (kW), and for QFs of all other resource types with a design capacity of up to 10 average megawatts (aMW). Order No. 32697 at 13-14. The Commission has adopted a term of 20 years for published rate contracts. *See id.* at 24-25; Order No. 33314 at 11. For QFs with a design capacity above the published rate eligibility caps, avoided cost rates are individually negotiated by the QF and the utility using the IRP methodology based on the specific characteristics of the resource. *See* Order Nos. 32697 at 2; 32176 at 1. The Commission has adopted a term of two years for individually-negotiated IRP-based rate contracts. Order Nos. 33357 at 25; 33419 at 19.

Procedural Rules 101 and 102 provide for the issuance of declaratory rulings by the Commission. IDAPA 31.01.01.101 and .102. Pursuant to Rule 101, persons seeking a declaratory ruling must state the ruling that the petitioner seeks, set out the factual allegations,

¹ The purchase rate for PURPA contracts must be “just and reasonable to the electric consumers . . . and in the public interest” and “shall not discriminate against [QFs].” 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304. Also, the purchase rate shall not exceed the “incremental cost” to the utility, defined as the incremental cost of electric energy or capacity which, “but for the purchase from [the QF], such utility would generate itself or purchase from another source.” 16 U.S.C. § 824a-3(d); 18 C.F.R. § 292.101(6) (defining avoided costs).

and indicate the statute or other controlling law pertaining to the petition. IDAPA 31.01.01.101.02. Rule 102 provides that the notice of the petition for a declaratory ruling will be issued to all affected utilities. IDAPA 31.01.01.102.

NOTICE OF PETITION

YOU ARE HEREBY NOTIFIED that the Company states it received applications for PURPA energy sales agreements from five proposed battery storage QFs. Petition at 3. According to the Company, the five applications seek contracts to provide a combined total of 148 megawatts (MW) of capacity. *Id.* The Company states that the five applications each request published avoided cost pricing and 20-year contracts. *Id.* Also, the applications included forms reflecting that they self-certified as QFs using FERC’s Form 556. *Id.*

YOU ARE FURTHER NOTIFIED that the Company states each proposed battery storage facility purports “to be a QF independent of its generation source,” and submitted a “generation output profile . . . [that is] nearly identical, and generally matches the shape, timing, and output of a solar generation profile.” *Id.* at 4, 7-8. Also, the Company states that four of the proposed projects – the “Franklin Energy Storage projects” – are “located at the same site and were submitted from a single developer [who also] previously submitted [contract requests] for the four proposed 20 MW Jackpot Solar facilities” at issue in the Commission’s final Order No. 33667 in Case No. IPC-E-16-21. *Id.*

YOU ARE FURTHER NOTIFIED that the Company states the “fifth proposed battery storage facility, Black Mesa LLC, was submitted by a different developer at a different location, but with nearly identical information provided in both the Schedule 73 application and Form 556 self-certification.” *Id.*

YOU ARE FURTHER NOTIFIED that the Company indicates it notified counsel for the Franklin Energy Storage facilities that the applications were incomplete, and identified deficiencies. *Id.* at 4-5. According to the Company, the Franklin Energy Storage facilities responded, “purporting to address [the] deficiencies . . . and demanding that Idaho Power proffer 20-year, published avoided cost rates.” *Id.* at 5. The Company states it responded to all five proposed battery storage facilities, indicating it does not agree they are eligible for the published rates and 20-year contracts. *Id.* The Company states it served its Petition in this case on the

representatives of the five battery storage facilities via US Mail and e-mail on February 27, 2017. Attachment 6 to Petition.

YOU ARE FURTHER NOTIFIED that the Company notes that QF status is “within the exclusive jurisdiction and properly before FERC, not this Commission, for determination.” *Id.* at 6. Without conceding any argument about the validity of each proposed battery storage facility’s QF status, the Company states that it “does not dispute that the facilities are self-certified QFs” in this matter before this Commission. *Id.*

YOU ARE FURTHER NOTIFIED that the Company notes there are connections and similarities between the previously proposed Jackpot Solar facilities, the proposed Franklin Energy Storage facilities, and the proposed Black Mesa storage facility. *Id.* at 9. The Company asserts the proposed battery storage facilities in this case “classify themselves without regard to the solar generation that will energize their batteries, and further propos[e] to disaggregate into 10 aMW increments . . . [in a] blatant attempt to manipulate” the rate eligibility cap and contract limitation for solar generators. *Id.* The Company further asserts that this attempted disaggregation to “qualify[] for published rates and 20-year contracts” is what the Commission intended to prevent when it reduced the published rate eligibility cap for wind and solar projects to 100 kW. *Id.* at 10 (citing Order No. 32262 in Case Nos. GNR-E-10-04, GNR-E-11-01); *see also* Petition at 8-12.

YOU ARE FURTHER NOTIFIED that the Company indicates there “is a real and substantial controversy as to the proper application of this Commission’s implementation of PURPA with regard to specific requests and actual and existing facts, applicable to the Proposed Battery Storage Facilities.” Petition at 7. Also, the Company states “it is appropriate and within the exclusive authority of the Commission to act in the public interest to protect customers from [the proposed projects’] manipulation of the rules and extend the 100 kW published rate eligibility cap to battery storage projects.” *Id.* at 13.

YOU ARE FURTHER NOTIFIED that the Petition and its attachments have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices. These documents are also available on the Commission’s web site at www.puc.idaho.gov. Click on the “File Room” tab at the top of the page, then select “Electric Cases” and click on the case numbers as shown on the front of this document.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and 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 and to implement FERC rules. The Commission may enter any final Order consistent with its authority under Title 61 and PURPA.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

YOU ARE FURTHER NOTIFIED that, pursuant to Rule 102, the Commission finds it appropriate to serve copies of this Notice on Avista Corporation dba Avista Utilities and PacifiCorp dba Rocky Mountain Power as potentially affected utilities. *See* IDAPA 31.01.01.102.

NOTICE OF MODIFIED PROCEDURE

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter, and that it will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Commission's Rules of Procedure, IDAPA 31.01.01.201 through .204. The Commission notes that Modified Procedure and written comments have proven to be an effective means for obtaining public input and participation.

YOU ARE FURTHER NOTIFIED that the developers received actual notice of the Petition on February 27, 2017. Consequently, we find it reasonable to set a developer comment deadline of less than 21 days. The deadline for written comments by the developers in this case shall be **Wednesday, April 5, 2017**.

YOU ARE FURTHER NOTIFIED that the deadline for written comments by Commission Staff, any potentially-affected utilities, and any other interested persons shall be **Thursday, April 27, 2017**.

YOU ARE FURTHER NOTIFIED that written comments must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this Petition shall be mailed to the Commission, the Company, and the developers at the addresses reflected below:

Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street
Boise, ID 83702-5918

Donovan Walker
Lead Counsel
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, ID 83707-0070
E-Mail: dwalker@idahopower.com

Franklin Energy Storage One through Four, LLC:

Peter Richardson
Richardson Adams, PLLC
515 North 27th Street (83702)
P.O. Box 7218
Boise, ID 83707
E-mail: peter@richardsonadams.com

Black Mesa Energy, LLC:

Brian Lynch
Black Mesa Energy, LLC
P.O. Box 2731
Palos Verdes, California 90274
E-mail: brian@mezzdev.com

These comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at www.puc.idaho.gov. Click the "Case Comment or Question Form" under the "Consumers" tab, and complete the comment form using the case number as it appears on the front of this document. These comments must also be sent to Idaho Power, Franklin Energy Solar, and Black Mesa Energy at the e-mail addresses listed above.

YOU ARE FURTHER NOTIFIED that the deadline for a reply, if any, by the Company, the developers, Staff, or affected utilities, shall be **Thursday, May 11, 2017**.

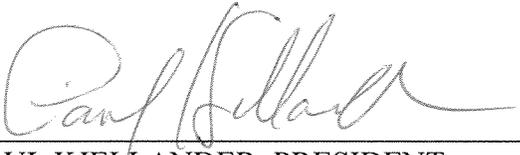
YOU ARE FURTHER NOTIFIED that if no written comments or protests are received within the time limit set, the Commission will consider this matter on its merits and enter its Order without a formal hearing. If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

ORDER

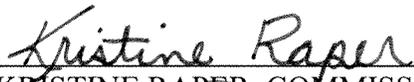
IT IS HEREBY ORDERED that the Petition of Idaho Power Company for a declaratory order be processed by Modified Procedure, Rules 201-204 (IDAPA 31.01.01.201-.204). The deadline for developers to submit comments in this matter is April 5, 2017. The deadline for affected utilities, Staff, and any other interested persons to submit comments is April 27, 2017. The deadline for any parties to file a reply is May 11, 2017.

IT IS FURTHER ORDERED that copies of the Petition and Notice shall be served on the affected utilities – Avista Corporation dba Avista Utilities and PacifiCorp dba Rocky Mountain Power.

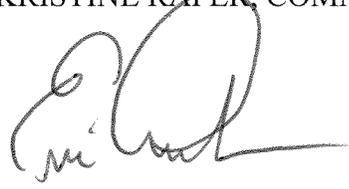
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *23rd* day of March 2017.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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