

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION) CASE NO. IPC-E-19-21
OF IDAHO POWER COMPANY FOR)
APPROVAL OF THE FIRST AMENDMENT)
TO THE ENERGY SALES AGREEMENT) ORDER NO. 34425
FOR THE MC6 HYDRO LLC PROJECT)

On July 3, 2019, Idaho Power Company filed an Application seeking approval of the First Amendment to its Energy Sales Agreement (ESA) with MC6 Hydro LLC (MC6). The ESA falls under the Public Utility Regulatory Policies Act of 1978 (PURPA), and is a contract for the sale and purchase of electric energy generated by the MC6 Hydro Project, a PURPA qualifying facility (QF). The Amendment changes the Scheduled Operation Date from July 30, 2019, to August 31, 2020. Idaho Power asked that the Commission process its Application by Modified Procedure.

On July 19, 2019, the Commission issued a Notice of Application and Modified Procedure, setting a 21-day comment period and a seven-day reply period. Staff filed the only comments. Idaho Power did not file reply comments.

Having reviewed the record, we now approve the Amendment as discussed below.

BACKGROUND

Under PURPA, electric utilities must purchase electric energy from QFs at purchase or “avoided cost” rates approved by this Commission. 16 U.S.C. § 824a-3; *Idaho Power Co. v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013). The Commission has established two methods for calculating avoided costs, depending on the size of the QF project: (1) the surrogate avoided resource (SAR) methodology, used to establish “published” avoided cost rates; and (2) the integrated resource plan (IRP) methodology, to calculate avoided cost rates for projects exceeding published rate limits. *See* Order No. 32697 at 7-8. 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). *Id.*; *see also* 18 C.F.R. § 292.304(c).

The Commission approved Idaho Power’s ESA with MC6 in 2018. Order No. 34106. The ESA contains a Scheduled Operation Date of July 30, 2019. After the ESA was executed and approved, a principal developer of the QF died unexpectedly, delaying its construction.

On June 21, 2019, Idaho Power and MC6 entered into an Amendment to their ESA, subject to this Commission’s approval. The Amendment deletes Appendix B-3 of the ESA—titled “Scheduled First Energy and Operation Date”—and replaces it with a new Appendix B-3 that changes the Scheduled Operation Date from July 30, 2019, to August 31, 2020. *See* Attachment 1 of Application in Case No. IPC-E-18-09. Idaho Power stated this change is necessary because “a principle developer of the MC6 Facility became unexpectedly ill and subsequently passed away, delaying construction of the facility.” Application at 2. The Amendment provides that “[t]he July 30, 2019, Scheduled Operation Date will remain in effect only as the start date for calculating any Delay Damages.” *Id.* If the Amendment is approved, MC6’s Delay Damages will be calculated from the original Scheduled Operation Date in the ESA.

STAFF COMMENTS

Staff filed the only comments, and supported approving the Amendment. Staff argued that the primary issue arising from moving the Scheduled Operation Date is whether the avoided cost rates in the original contract will still be fair, just, and reasonable. To analyze this issue, Staff examined: 1) whether Commission orders provide guidance about the shelf life of PURPA rates for contracting purposes; 2) how the 28 months from the contracting date to the new Scheduled Operation Date compare with other PURPA contracts; and 3) how the current contract’s use of avoided cost rates instead of the most recent authorized avoided cost rates would impact customers over the life of the contract.

Staff concluded that the avoided cost rates in the original contract are fair, just, and reasonable. It recommended approval of the Amendment to change the Scheduled Operation Date from July 30, 2019, to August 31, 2020. However, Staff suggested that the Commission should, in a future case, establish a time limit for contracted avoided cost rates.

COMMISSION FINDINGS AND DISCUSSION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. 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 61-503. In addition, the Commission has authority under PURPA and Federal Energy Regulatory Commission (“FERC”) regulations to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, 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 Application, proposed Amendment, and the comments of Staff. Based on our review, we find it reasonable to approve Idaho Power's Amendment. The main issue arising from this Amendment is whether the avoided cost rates in the original contract will still be fair, just, and reasonable. We find them to be so. The 28-month timeframe between the parties' contracting date and the Scheduled Operation Date resulting from the Amendment is comparable to existing projects on Idaho Power's system and does not conflict with our prior decisions. Moreover, delay damages will be applied based on the original Scheduled Operation Date.

There is a point at which avoided cost rates could become stale after substantial delay. While the facts of this case do not warrant such a finding, we encourage utilities within our jurisdiction to remain vigilant regarding application of the appropriate avoided cost rate in each PURPA contract.

ORDER

IT IS HEREBY ORDERED that the Amendment to Idaho Power's ESA with MC6—changing the Scheduled Operation Date from July 30, 2019, to August 31, 2020—is approved.

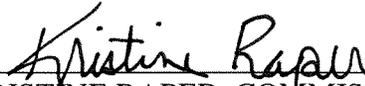
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within 21-days of the service date of this Order with regard to any matter decided in this Order. Within seven days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

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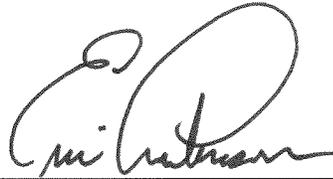
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *23rd*
day of August 2019.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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