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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR) Case No. IPC-E-19-01
APPROVAL OR REJECTION OF AN)
ENERGY SALES AGREEMENT WITH J.R.) **COMMENTS OF J.R. SIMPLOT**
SIMPLOT COMPANY FOR THE SALE) **COMPANY**
AND PURCHASE OF ELECTRIC)
ENERGY FROM THE SIMPLOT-)
POCATELLO COGENERATION AND)
SMALL PURCHASED POWER PROJECT)

INTRODUCTION AND SUMMARY

The J.R. Simplot Company (“Simplot”) respectfully submits these comments requesting that the Idaho Public Utilities Commission (“IPUC” or “Commission”) approve the Energy Sales Agreement (“ESA”) submitted by Idaho Power Company (“Idaho Power”) in this proceeding. Simplot’s qualifying facility (“QF”) is powered by waste heat generated in industrial processes that is in turn used in a cogeneration process that produces: (1) electric energy sold to Idaho Power, and (2) steam used for purposes related to production of fertilizer in Simplot’s Don Plant in Pocatello, Idaho.

As explained below, the ESA contains newly developed revisions to the parties’ previous ESAs with respect to implementation of the Commission’s 90-110 performance band. These revisions were developed in the process of discussing the parties’ divergent positions alleged in

the competing petitions to make far more significant changes to the 90-110 performance band in Case Nos. IPC-E-18-07. Ultimately, the parties' agreement to propose Commission approval of the relatively minor revisions contained in the ESA submitted here resulted in voluntary withdrawal of the petitions in that case.

Aside from the two revisions to the 90-110 performance band in prior Simplot ESAs and updated avoided cost rates, the ESA submitted for the Commission's approval contains substantively identical terms to the currently effective ESA approved by the Commission in Order No. 33471, Case No. IPC-E-16-01. The revisions to the 90-110 performance band in the ESA submitted for approval here will provide benefits to both Idaho Power and Simplot and reduce the risk of disputes over implementation of the 90-110 performance band in the future. The revisions fall into two different categories: (1) providing an opportunity for more accurate Monthly Estimated Net Energy Amounts¹ for Idaho Power's use by allowing updates to be made closer in time to the month of delivery; and (2) clarifying and improving the process by which Simplot may exercise a Declared Suspension of Energy Deliveries which will result in adjustment to the Monthly Estimated Net Energy Amounts within the month of delivery. Both of these revisions are consistent with the spirit of the Commission's prior orders regarding the 90-110 performance band. The proposed revisions were made based upon over a decade of experience with the Commission's 90-110 performance band and the parties' good faith discussions to improve implementation for both parties. Simplot respectfully requests that the Commission approve the ESA as submitted without modification.

¹ Capitalized terms in these comments have the same meaning as in the ESA submitted for approval.

COMMENTS

As initially developed in Order No. 29632, the performance band requires the QF, in advance of a given month of delivery, to forecast its expected monthly deliveries to the utility – referred to as Monthly Estimated Net Energy Amount in Idaho Power ESAs. If the QF delivers within 90 percent and 110 percent of the Monthly Estimated Net Energy Amount, it is paid the contract price for all of its output. However, if the QF delivers more than 110 percent of the Monthly Estimated Net Energy Amount, energy delivered in excess of 110 percent is priced at the lesser of 85 percent of the market price at the time of delivery or the fixed contract price. *See* Order No. 29632 at 20. In contrast, if the QF delivers less than 90 percent of the Monthly Estimated Net Energy Amount, it is paid the lesser of 85 percent of the market price at the time of delivery or the fixed contract price for *all of its output* in that month. *Id.* Additionally, the Commission also allowed the QF to update its Monthly Estimated Net Energy Amounts in the month of delivery in the case of an event of forced outage or event of force majeure. *Id.* at 20-21.

Although the basic construct of the performance band has remained unchanged since Order No. 29632 in 2004, the Commission has occasionally approved changes warranted by experience with the performance requirement. The two changes submitted to the Commission in this proceeding are reasonable and within the spirit of the purpose of the performance band as initially conceived by the Commission.

1. Allowing Updates to the Monthly Estimated Net Energy Amounts Closer in Time to the Month of Delivery Is Reasonable

The first change from Simplot's prior ESA is to allow for updates to the Monthly Estimated Net Energy Amounts closer in time to the month of delivery. This change is reflected in Article

6.2.3.

Under the previously approved ESA, Simplot was allowed to update its Monthly Estimated Net Energy Amounts up until the last business day of the month that was one month removed from the month of delivery. For example, Simplot previously could update the Monthly Estimated Net Energy Amount for the month of March up until the last business day of January.

Under Article 6.2.3 of the ESA submitted in this case, Simplot would be able to update the Monthly Estimated Net Energy Amount up until the 25th day of the month immediately preceding the month of delivery, or if the 25th day falls on a holiday or weekend, the last business day before the 25th. For example, Simplot would now be allowed update the Monthly Estimated Net Energy Amount for the month of March until February 25th. The parties arrived at this revision due to their discussions and information exchanged in discovery in Case No. IPC-E-18-07. In short, the parties believe that the Monthly Estimated Net Energy Amounts submitted by QFs are likely to be more accurate, and thus more useful for Idaho Power's planning purposes, if they can include updated information that may become available closer to the month of delivery.

This proposal to allow for more accurate updates closer to the month of delivery is consistent with the spirit of the last Commission order to address this same question. Specifically, in Case No. IPC-E-14-12, the Commission considered a proposal to change the deadline for such updated Monthly Estimated Net Energy Amounts from three months in advance of the month of delivery to one month in advance of the month of delivery. Although Order No. 29632 had called for the three-month deadline, the Commission found that a new deadline for submitting estimates reasonable. The Commission found "that monthly, as opposed to quarterly, reporting of energy generation estimates is a reasonably negotiated term between the parties and not inconsistent with the Commission's guidance and findings in Order No. 29632." Order No. 33104 at 6. Quoting

from Order No. 29632 itself, the Commission explained, “We find that the interest of the Company in planning for QF resources is better served if the generation forecast is a reliable estimate.” *Id.* (quoting Order No. 29632 at 23). The Commission further declared that it “did not approve the 90/110 provisions in order to implement a punitive pricing mechanism. The intent of a QF providing generation estimates has always been to assist the utility in forecasting and operational planning so that the utility can provide the most reliable service possible to its customers.” *Id.* Thus, allowing for use of a deadline one month ahead of the month deliveries was “consistent with that purpose.” *Id.*

That same reasoning applies here. Both Idaho Power and Simplot agree that the change will be helpful to both parties. Idaho Power will receive more accurate Monthly Estimated Net Energy Amounts in the circumstances where Simplot may need to update those estimates during the month prior to the month of delivery due to unexpected circumstances. Allowance for more accurate estimates will reduce the possibility of the 90-110 performance band operating as a punitive pricing provision. This proposed change is reasonable and consistent with the spirit of the Commission’s prior orders.

2. The Revisions to the Process for Declared Suspensions of Energy Deliveries Are Reasonable

The second change to implementation of the 90-110 performance band in the ESA submitted here are improvements to the process for exercising a Declared Suspension of Energy Deliveries. Within the construct of the 90-110 performance band, the Commission allows for adjustment to the QF’s Monthly Estimated Net Energy Amount during the month of delivery in the event of an outage or interruption, which can include both events of Forced Outage or Force Majeure. These provisions are contained in Articles 6.2.4 and 12.3, which use the term Declared

Suspension of Energy Deliveries to describe events that qualify for such reductions to the Monthly Estimated Net Energy Amounts.

These provisions of the 90-110 performance band are very important to Simplot. Simplot experiences unexpected outages beyond Simplot's reasonable control at its cogeneration facility in the Don Plant, and such outages can easily result in Simplot being unable to deliver 90 percent of its pre-set Monthly Estimated Net Energy Amount for a given month, absent adjustments to take these events into account.

In Order No. 29632, the Commission approved the use of adjustments to Monthly Estimated Net Energy Amounts within the month of delivery where a forced outage or force majeure event occurs, but the Commission provided only broad guidance on the topic. Order No. 29632 at 20-21. The order establishes that, in the case of a force outage event, the outage must be at least 48 hours in duration. *Id.* The Commission described forced outages generally as including "generating equipment breakdowns, geothermal well breakdowns, Idaho Power line maintenance outages, etc." *Id.* The order also noted that Idaho Power had naturally included allowance for adjustments to the Monthly Estimated Net Energy Amounts during the month of delivery in the case of an event of force majeure. *Id.* at 14-15, 20.

In the prior Simplot ESAs, the process for Declared Suspension of Energy Deliveries was somewhat unclear and challenging to use in practice. The previous clause was problematic because it stated Simplot must report and describe the cause of the outage in writing within 24 hours of the start of the outage. Another difficulty was that the previous clause stated Simplot had to prove a negative to claim a Forced Outage because a Forced Outage must not be caused by a lack of preventive maintenance. In practice, Simplot's facility experiences outages for which the eventual duration and cause are not known within 24 hours. Often, it is not possible to ever identify

the precise cause of such an outage in a complex cogeneration system like that at Simplot's Don Plant.

In the newly proposed ESA, revisions were made to improve the process for both parties. Under the proposed Article 12.3, Simplot provides a preliminary notice to Idaho Power's contractual personnel during the next business day after an outage lasting for 48 hours, thus potentially qualifying it as a Forced Outage exempted from the 90-110 performance band. This preliminary notice provides Idaho Power with preliminary information available at that time, including the outage start time and date, the level of reduction of deliveries, the cause (if known at the time), and Simplot's best estimate of when the outage will end. But Simplot will have up to seven days after conclusion of the outage to determine if it will exercise its right to make a formal Declared Suspension of Energy Deliveries by providing Idaho Power with its written notice with details supporting the claim. This will prevent issuance of such claims before it is even known if the outage will last more than 48 hours and will provide additional time to investigate and accurately present the basis for the claim.

Additionally, given the difficulty of proving a negative, the proposed Article 12.3.3 allows Simplot to establish its outages are not the result of lack of preventive maintenance by periodically providing Idaho Power with evidence of ongoing maintenance at the facility. Unlike the prior clause, the proposed Article 12.3 also clarifies that an Event of Force Majeure may also result in an adjustment to the Monthly Estimated Net Energy Amount. Finally, as with the current contract and the requirements of the interconnection agreement, Simplot also provides Idaho Power's operational personnel with immediate notice at the start and stop of all outages. The provisions are collectively consistent with the original requirements described in Order No. 29632, and, from Simplot's perspective, an improvement over the prior contracts.

In sum, the changes to the provisions for the Declared Suspension of Energy Deliveries reflect the experience of the parties since initial adoption of the 90-110 performance band and should be approved as reasonable provisions within the scope of the initial policies set forth in Order No. 29632.

CONCLUSION

For the reasons set forth herein, Simplot respectfully requests that the Commission approved the ESA submitted by Idaho Power in this proceeding.

DATED this 13th day of February 2019.

RICHARDSON ADAMS, P.L.L.C.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of February 2019, I served a true and correct copy of the foregoing document(s) upon the following person(s), in the manner indicated:

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