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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

On April 16, 2018, Idaho Hydroelectric Power Producers Trust ("Idahydro"), Shorock Hydro, Inc. ("Shorock"), and the Renewable Energy Coalition ("REC") (collectively the "Petitioners") petitioned the Commission asking that the 90/110 requirement inserted into PURPA QF energy Sales agreements ("ESA") be removed. IPC-E-18-07. (the "*Petition*") The *Petition* alleged, among other matters, that non-avoided cost pricing for energy delivered below 90% and above 110% of estimates made a month ahead of delivery of the energy was contrary to 18 C.F.R §292.304(d). Petitioners alleged the regulation distinguished only between energy sold

on an "as available" basis at the time of delivery (which the Petitioners viewed as non-firm) and energy sold pursuant to and ESA for delivery over a specified term (which the Petitioners viewed as firm). The regulation made no reference to guaranteed power deliveries at a specified time as "firm" power.

Idaho Power differed. In its *Cross-Petition*, Idaho Power cited and argued the minority position developed by Texas and narrowly upheld in *Exelon Wind 1, L.L.C. v. Nelson*, 766 F. 3d 380 (5th Cir. 2014), which characterized the Texas "firm power" rule as follows:

> [O]nly those Qualifying Facilities able to forecast when they will deliver energy to the utility – and capable of delivering the specified amount of energy at the scheduled time – are eligible to take advantage of the pricing options in subsection (d)(2) of FERCs Regulation [18 C.F.R. § 292.304(d)]. By contrast, Qualifying Facilities with non-firm power that cannot guarantee such delivery may charge the utility only the current or 'as-available' market price for power.

Ibid. at page 386.

Thus, in IPC-E-18-07, the parties occupied dichotomous poles. The Qualifying Facilities advocated for the majority position, which is avoided cost payment for all energy delivered pursuant to an ESA. Idaho Power advocated for the minority extreme, which is a limitation to payment for energy on spot market "as available" prices unless the facility could deliver a specified amount of energy at specific, scheduled times.

Idaho Power made clear in its *Cross-Petition* that the issue under consideration for Idaho Power was whether the Qualifying Facilities were selling "firm" energy, i.e., a guaranteed quantity at a guaranteed time. Idaho Power quantified what was NOT under consideration at page 5 of the *Cross-Petition*:

> Contrary to what may be indicated by the areas of inquiry from the discovery questions delivered to Idaho Power and Avista thus far, this case and question is not a matter of integration costs, damages, replacement power costs, forecasts, the utility's risk management, operating plans or non-performance penalties . . . .

Rather, Idaho Power set out its perspective as quite something else:

> [R]ather it is a matter of the proper and lawful implementation of eligibility for firm versus non-firm avoided cost rates for purchases as set forth in 18 C.F.R. §292.304(d) in a manner that is not harmful to Idaho Power retail customers.

Stated another way, the issue did not swirl around whether Idaho Power could effectively integrate the Qualifying Facility power, but what the price would be.

Through the process of several settlement meetings, the parties settled on a compromise that offered homage to the needs of both sides for as much stability, reliability, and predictability as could be afforded to Qualify Facilities that were for the most part run off the river, and to Idaho Power's insistence upon what it defined as "firm power." The parties retained the 90/100 pricing construct but moved the estimation date from the first of the month before delivery to the 25th of the month before delivery. The parties agreed to the realistic practicality that the closer in time the estimate to the actual deliveries, the better and more reliable the estimate. This brought the Qualifying Facilities closer to pegging the estimates between the 90 and 110 percent parameters, and simultaneously brought Idaho Power closer to assurance that the power estimate would be the power delivered.

To the extent that a shift of the estimation dates closer to the delivery dates can be in any way perceived as interruptive of Idaho Power's integration needs, as opposed to serving its integration needs because the information is more accurate, Idaho Power made clear in its discovery responses in IPC-E-18-07 that such a perception would be inaccurate. In its Answer to Interrogatory No. 2, *Idaho Power Company's Answers and Responses to J.R. Simplot's First Interrogatories Requests for Admission, and Requests for Production to Idaho Power Company,* Idaho Power noted it started estimating its needs with its must-run resources, including PURPA energy, starting with a five-year rolling average, and then adjusting that average "as necessary

due to information known to Idaho Power or by changes in adjusted monthly net energy amounts provided by the projects." Thus, the more accurate the monthly energy amounts provided by the projects, the better Idaho Power's estimates of its needs.

Idaho Power confirmed in this proceeding in its discovery responses to the Commission Staff that the modest revisions to 90/100 pricing construct are reasonable modifications that can be accommodated with Idaho Power's operations. In response to Staff's Production Response No. 3, Idaho Power explained that, from its perspective, the 90/110 provisions are to serve as a measure of "firmness" and:

> Idaho Power's monthly Operating Plan and risk management process would not change if the Net Energy Amount notification process is modified as contained in the Simplot ESA, which would require that any changes to monthly Estimated Net Energy Amounts be provided no later than the earlier of the 25th day in advance of the month being changed or the last business day prior to the 25th day. Idaho Power would continue to forecast generation deliveries from QFs in the same manner it has in the past and would continue to have long-term projections of generation deliveries from projects.

Thus, the change will not have any operational, forecasting, or risk management harm on Idaho Power.

Idaho Power further explained that the changes would not harm customers. In response to Staff's Production Request No. 4 in this proceeding about whether Idaho Power would lose any benefits, Idaho Power explained that:

> The Company does not anticipate losing any benefits associated with the change in the Net Energy Amount notification process as contained in the ESA with Simplot but gaining more up-to-date and accurate information and moving the estimates closer to a firm scheduled delivery.

If anything, the change would benefit Idaho Power by providing better information. Idaho Power also stated in response to Staff's Production Request No. 3 that:

> If a QF can provide estimates of generation deliveries nearer to the month of actual deliveries, it stands to reason that the estimated Net Energy Amount may be more accurate than if it is providing it a month in advance.

The parties to the discussions that resolved the controversy in IPC-E-18-07 represented Idaho Power and some 60 developers and at least 24 Idaho Qualifying Facilities, presenting the Commission a broadly adequate representation of small hydroelectric and cogeneration energy interests. It is fair to say that the settlement and agreement among all these parties to draw Qualifying Facility delivery estimates into tighter, more accurate parameters for the mutual benefit of the Qualifying Facilities, the utilities, and, consequently, the utility rate payers, in addition to extricating the industry from protracted litigation, provides universal benefits to all involved. To unwind this understanding will again needlessly cast the industry into a conflict and uncertainty. Thus, the modest changes before the Commission with this contract approval reflect a mutually beneficial compromise supported by the hydroelectric and biomass Qualifying Facility industry. This is a classic "win-win" situation of agreement among the stakeholders that is so rare in the area of PURPA.

Determining the reasonableness of moving estimate deadlines closer to delivery dates necessarily entails reviewing just what goal the 90/110 band attends. Initially created in *Order No. 29632* after years of ESA's which operated through their life with only one, initial, immutable estimate of deliveries, the 90/110 pricing and monthly estimate concept arose from the Commission's reasoning concerning the idea of "firmness."

> The Commission finds that the firm/non-firm issue raised is really one of predictability, not capacity factor. The Company has accepted monthly predictability as reasonably firm.

Order No. 29632, page 13.

> The Commission finds it is reasonable to define firmness as predictability on a monthly basis.

Order No. 29632, page 14.

> As reflected in our 10MW cap discussion, the Commission finds that a legally enforceable obligation translates into contractual obligations of both parties. For a QF it translates into an obligation or commitment to deliver its monthly estimated production.

Order No. 29632, page 20.

Thus, the Commission found satisfaction and fairness by adopting monthly estimated production in the reasoned and reasonable compromise struck between just one estimate at the initiation of an ESA and the moment by moment predictability.

Ten years later, when reconsidering the time of providing a monthly estimate production, moving the estimate from three months before production to one month before production, the Commission found that a closer estimate continued to serve the initial purpose of providing monthly estimate production.

> Specifically, we find 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. As we stated in the Order, "it is reasonable and operationally expedient to require QFs to provide Idaho Power with monthly kWh production estimates. . . . The Commission finds it reasonable to provide more frequent opportunities to revise generation estimates than [the two years] proposed by the Company. We find that the interest of the Company in planning for QF resources is better served if the generation forecast is a reliable estimate." Order No. 29632 at 23. The Commission 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. We find that a provision allowing for monthly generation estimate updates is consistent with that purpose.
>
> We acknowledge Staff's concerns that monthly generation estimates would likely allow more energy production to fall within the 90/110 band. However, no evidence was presented that this result is unreasonable or would work to the detriment of Idaho Power's ratepayers. Moreover, Staff ultimately agreed that "much of the justification provided by Idaho Power" in defense of utilizing monthly generation estimates has merit. Staff Comments at 7. Consequently,

based on our review of the evidence presented, we find that the use of monthly generation estimates is just and reasonable. We encourage Idaho Power to be mindful of the effects that this change may have on both its operations and its ratepayers. We expect that the Company will weigh the benefits and detriments of monthly generation estimates as projects with these provisions come on line.[1]

CONCLUSION

When defining "firm" power for purposes of PURPA contracts, insofar as that concept has use to the utility, the more accurate the estimate, the more firm the power. Month-ahead estimates of the power to be delivered the following month provide a reasonable monthly estimate for the utility. Estimates made closer to the date of delivery, being more accurate, consequently, are more reasonable. There exists no reason not to adopt the industry's solution and move forward. The Commission's Rules "encourage the use of informal proceedings to settle or determine cases." IDAPA 31.01.01.022. It is respectfully requested the Commission advance that directive and approve the ESA presently before it in this case.

DATED this 8th day of February 2019.

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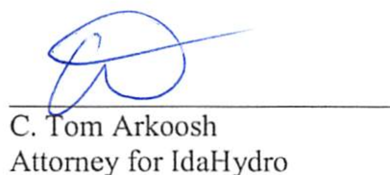

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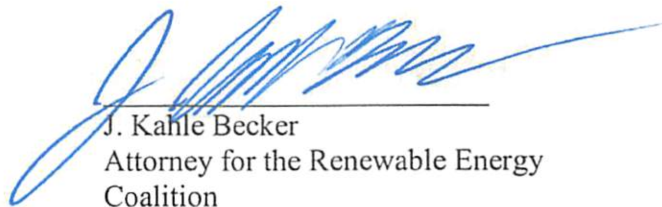

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[1] Although the Commission noted in *Order No. 33104* that implementation of the 90/110 pricing system was not intended to create a punitive pricing system, it has in fact been costly to ESAs. The seeds of an idea planted by former Commissioner Smith perceptions announced 10 years ago in the dissent to *Order No. 29632* have born expensive fruit for "run of the river" PURPA hydro projects:

> I strongly oppose the 90%/110% performance band proposal of Idaho Power and also do not favor the 80%/120% proposal of the Staff. It is my belief that project developers that sign PURPA contracts have a legally enforceable obligation. The incentive for them is to provide all the power they can. They need to be paid to stay in operation and if they do not produce, they do not get paid. The banding proposal would operate as a penalty, not an incentive.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 8th 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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