C. Tom Arkoosh, ISB No. 2253
ARKOOSH LAW OFFICES
802 W. Bannock Street, Suite 900
P.O. Box 2900
Boise, ID 83701
Telephone: (208) 343-5105
Facsimile: (208) 343-5456
Email: tom.arkoosh@arkoosh.com

Attorneys for Petitioners, Idahydro and Shorock Hydro, Inc.

Peter J. Richardson, ISB No. 3195
Gregory M. Adams, ISB No. 7454
RICHARDSON ADAMS, P.L.L.C.
515 N. 27th Street
Boise, ID 83702
Telephone: (208) 938-2236
Facsimile: (208) 938-7904
Email: peter@richardsonadams.com
Email: greg@richardsonadams.com

Attorneys for Petitioner J.R. Simplot Company

J. Kahle Becker, ISB No. 7408
Attorney at Law
223 North 6th Street, # 325
Boise, ID 83702
Telephone: (208) 345-5183
Facsimile: (208) 906-8663
Email: kahle@kahlebeckerlaw.com

Irion Sanger, *Pro Hac Vice Pending*
SANGER LAW, P.C.
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: (503) 756-7533
Facsimile: (503) 334-2235
Email: irion@sanger-law.com

Attorneys for Petitioner Renewable Energy Coalition

RECEIVED
2018 APR 16 PM 4:39
IDAHO PUBLIC UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF PETITION OF IDAHYDRO, SHOROCK HYDRO, INC., J.R. SIMPLOT COMPANY, AND RENEWABLE ENERGY COALITION FOR MODIFICATION OF THE 90/110 PERFORMANCE BAND AND CALCULATION OF OPERATION AND MAINTENANCE CHARGES FOR PURPA QUALIFYING FACILITIES	)))))))))	Case No. IPC-E-18-07 **IDAHYDRO, SHOROCK HYDRO, INC., J.R. SIMPLOT COMPANY AND RENEWABLE ENERGY COALITION'S PETITION**

COMES NOW the Idaho Hydroelectric Power Producers Trust, an Idaho Trust, d/b/a Idahydro ("Idahydro"), Shorock Hydro, Inc. ("Shorock"), the J.R. Simplot Company ("Simplot"), and the Renewable Energy Coalition ("REC") by and through their respective counsel of record, C. Tom Arkoosh of Arkoosh Law Offices, Peter J. Richardson and Gregory

M. Adams of Richardson Adams, PLLC, and J. Kahle Becker and Irion A. Sanger, and pursuant to Rules of Procedure ("R.P") 53 and 326, hereby petition the Idaho Public Utilities Commission ("Commission") to modify, amend, or stay existing orders or rules, and to clarify rights and obligations implementing Section 210 of the Public Utilities Regulatory Policy Act of 1978 ("PURPA"), 16 U.S.C. § 824a-3 *et seq.*, as set forth herein.

Although Petitioners reserve the right to ascertain additional facts through discovery and thereafter supplement the facts herein through testimony and evidence, Petitioners state the following facts and claims in support of this Petition:

I.

PARTIES

1. Petitioner Idahydro is an Idaho Trust comprised of 12 members who own or operate 28 small hydropower production plants of approximately 78.54 MW nameplate capacity that are Qualifying Facilities ("QFs") under PURPA and sell power to Idaho Power Company ("IPCo") pursuant to energy sales agreements ("ESAs"), which are legally enforceable obligations pursuant to PURPA.

2. Petitioner J.R. Simplot Company ("Simplot") is a Nevada corporation duly registered to conduct business in Idaho, which is engaged in the agriculture and food industries. In addition to being a large energy user, Simplot directly or indirectly owns several energy generation facilities, including two facilities in Idaho that currently sell their electrical output as QFs to IPCo. Those two facilities are a cogeneration facility fueled by waste heat at the Simplot fertilizer plant in Pocatello, Idaho, and the Magic Reservoir Hydroelectric Project located near Shoshone, Idaho.

3. Petitioner Renewable Energy Coalition ("REC") was established in 2009, and is

comprised of nearly forty members who own and operate over fifty qualifying facilities or are attempting to develop new QFs in Oregon, Idaho, Washington, Utah, Montana and Wyoming, some of which sell power to IPCo pursuant to ESAs.

4. Petitioner Shorock is an Idaho corporation, owning a small hydro QF located in Twin Falls County, Idaho, project number 3161514, having an ESA with IPCo approved by the Commission in *Order No. 33549* on December 13, 2017. In part, the ESA results from a joint stipulated motion of the parties approved by the Commission in *Order No. 33918* on October 25, 2017, that the ESA would be subject to the outcome of this anticipated *Petition*. Further, Shorock is a member of Idahydro and REC.

5. Petitioners name IPCo as Respondent to this Petition. *See* R.P. 53.05(d). IPCo is an Idaho corporation, duly qualified to do and doing business in the states of Idaho and Oregon as a public utility.

II.

90/110 PERFORMANCE BAND

6. Until 2004, QFs provided IPCo estimates in their ESAs of the energy production expected to be delivered to IPCo and thereafter received full avoided cost priced payment under PURPA for all energy delivered, which energy all parties and the Commission considered firm energy.

7. On or about November 22, 2004, the Commission issued *Order No. 29632* in consolidated cases IPC-E-04-08 and IPC-E-04-10 ("Consolidated Cases"), which redefined "Firm" energy from the prospective of predictability of the quantity of energy delivered rather than as a firm commitment to deliver all energy produced by the QF made in an ESA for the delivery of energy and capacity over a specified period of time. This provision does not arise

from, and is contrary to, 18 C.F.R. § 292.304(d), which distinguishes QF energy sold on an "as available" basis at the time of delivery ("Non-firm") and energy sold pursuant to a ESA for delivery over a specified term ("Firm"). *See Order No. 18190,* U-1006-20.

8. Firm energy for purposes of PURPA projects has historically meant a firm commitment to deliver the entire net output rather than a guarantee that the electricity will be predictable and planned. As PURPA recognizes, even if an individual QF may not always provide the equivalent of Firm power to the utility, the aggregation of all QFs committed to sell their entire net output to the utility will constitute the equivalent of a larger Firm resource. 45 Fed. Reg. 12,214, 12,227 (Feb. 25, 1980). Thus, implementation of PURPA requires consideration of the aggregate capacity value of such QFs in calculating the purchasing utility's avoided costs over a specified term.

9. The Commission proceeded to further granulation in *Order No. 29632* to require predictability of delivery be refined to fall within a 90% to 110% band of estimates made three months prior to delivery before a QF received full avoided cost payments for energy delivered in the month in question (the "90/110 Performance Band"). Failure to deliver energy within this performance band resulted in payment for energy at the lesser of the Non-firm, as available pricing, or the ESA pricing. The 90/110 Performance Band has asymmetrical deadbands that provide an incentive for QFs to inaccurately forecast. At this time, IPCo continues to require this provision in new ESAs, and currently requires the energy schedules be locked in at least a month in advance of the month of delivery.

10. Adoption of the 90/110 Performance Band resulted from claims by IPCo of five changes of circumstance, all of which centered on IPCo's asserted need for improved ability to integrate QF resources into IPCo's resource planning and acquisition by encouraging developers

to deliver more predictable quantities of energy.[1] The timing of Idaho Power's proposal coincided with the increasing economic viability of wind and solar QFs, which were expected to provide more variable and less predictable energy production than the aggregate production of Idaho's traditional portfolio of small hydropower, cogeneration, and baseload QFs.

11. The Commission adopted the 90/110 Performance Band notwithstanding PURPA's express purpose to divorce QFs from the constraints of traditional energy markets. Ultimately, the Commission concluded that unplanned for and not easily integrated energy may have to be sold in the surplus market or other more economic resources of the company backed down, and thus imposed the 90/110 Performance Band.

12. The 90/110 Performance Band pricing results in payments for energy below the avoided cost rates paid pursuant to an ESA with such rates calculated "at the time the obligation is incurred," 18 C.F.R. § 292.304(d)(2)(ii), and instead substitutes an avoided cost "calculated at the time of delivery," 18 C.F.R. § 292.304(d)(2)(i), thereby contravening the QF's "option" to sell its output at forecasted and fixed avoided cost rates under 18 C.F.R. § 292.304(d)(2)(ii). As stated by Commission Marcia Smith in her dissent in *Order No. 29632* at p. 24:

> 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

---

[1] (1) Wholesale markets have standardized the terms and conditions of wholesale firm energy transactions. As a result, wholesale firm energy purchases from creditworthy counterparties are now generally accepted as a prudent and cost-effective way of meeting a portion of a utility's resource needs.

(2) Idaho Power has changed from an energy-constrained company to a capacity-constrained company. Seasonal peaks require the Company to have a high degree of confidence that energy purchases will be delivered in the amounts and at the times specified to match seasonal peak energy demands.

(3) Transmission constraints require that Idaho Power more precisely anticipate its needs for firm energy imports.

(4) The growing prominence of intermittent generating technologies, such as wind and solar, require a new approach in the Company's PURPA contracting procedures.

(5) The Company's increased use of firm market purchases as hedges to manage risk escalates the importance of predictable resource availability.

See, Order No. 29632, pp. 15-16 [internal citations omitted].

paid. The banding proposal would operate as a penalty, not an incentive.

See also PaTú Wind Farm, LLC v. Portland General Electric Co., 151 FERC ¶61,223 (2015), generally disapproving of such performance bands.

13. Circumstances have changed once again, obviating the need for a 90/110 Performance Band to integrate power, including:

a. The variability of hydro QFs in the aggregate is within the range of variability exhibited by IPCo hydropower facilities.

b. Hydropower and other non-wind and non-solar QFs are sufficiently predictable in the aggregate that IPCo can reasonably incorporate their variability into its planning and operations.

c. The individual, non-wind and non-solar QF is so small in the IPCo system that any monthly excess energy or shortfall energy amounts would be de minimis (lost in the "noise") of operating IPCo's system.

14. The Commission should also revisit the 90/110 Performance Band because it was not designed to address the unique situation regarding the predictable, aggregated value of small hydropower, biomass, cogeneration, and baseload QFs. While *Order No. 29632* explicitly and implicitly intended to address the less Firm deliveries of increasing numbers of wind QFs, subsequent events and Commission orders have more directly addressed this concern by offering wind QFs, as well as solar QFs, reduced fixed avoided cost rates to account for the integration costs and the reduced capacity value supplied by those resources. *See Order No. 30488*; *Order No. 32697.* Accordingly, wind QFs (and some solar QFs) have obtained ESAs without the 90/110 Performance Band in exchange for such reductions to their fixed prices and a mechanical availability guarantee – largely removing the underlying basis for the 90/110 Performance Band

in the first place. Only Idaho's traditional fleet of small hydropower, cogeneration, biomass, and baseload QFs remain limited to long-term ESAs that contain the 90/110 Performance Band and thus deprive the QF of a forecasted, fixed avoided cost rates calculated at the time the obligation is incurred and reflecting their aggregate value to the utility under 18 C.F.R. § 292.304(d)(2)(ii).

15. For the reasons set forth above and additional reasons Petitioners may present through testimony and other evidence, Petitioners allege that the Commission should modify its existing policy and orders approving of use of the 90/110 Performance Band's applicability to small hydropower, cogeneration, biomass, and baseload QFs that choose to enter into an ESA or otherwise legally enforceable obligation. Instead, the Commission should determine that after the date of the order issued in this proceeding small hydropower, cogeneration, biomass, and baseload QFs may elect to sell their electrical energy and capacity to electric utilities regulated by the Commission at forecasted, fixed avoided cost rates calculated at the time the obligation is incurred under 18 C.F.R. § 292.304(d)(2)(ii) under long-term ESAs that do not contain the 90/110 Performance Band requirement.

III.

SCHEDULE 72 OPERATION AND MAINTENANCE COSTS

16. On December 1, 1991, *Order No. 24025,* Case No. IPC-E-90-20, the Commission approved operation and maintenance ("O&M") charges to be paid by QFs to IPCo on QF-provided, utility-owned interconnection facilities as set forth in Schedule 72. The O&M charge was intended to recover ongoing operational and maintenance costs over and above the initial upfront costs of interconnection construction assessed to the QF.

17. As approved in the compliance tariff by *Order No. 24172*, on February 1, 1992, the O&M charge is assessed at monthly amounts escalating from 0.47% of the initial

interconnection costs for facilities interconnecting at voltages below 138 kV and 0.26% on facilities interconnecting at voltages equal to or above 138 kV. The payments are progressively increased over the life of the facility's interconnection. For example, in the 20th year of a facility interconnected below 138 kV, the QF pays IPCo an annual O&M charge of 13.08% of the initial interconnection construction cost (e.g., $13,080 if initial construction cost was $100,000). The charge applies even if IPCo performs no O&M at all on the interconnection facilities in that year. The Schedule 72 O&M percentages are based upon the then-current (1991) financial assumptions and average O&M costs for IPCo's entire distribution and transmission plant, and not just QF costs for individual QFs, or QF costs as a class in the aggregate.

18. The Schedule 72 O&M monthly percentages have not changed since they were first approved in 1992. The currently approved version of Schedule 72 applied to any new or existing QF still contains the fixed monthly O&M charge based on assumptions from 1991.

19. The approval of an average O&M cost was based on the belief that a separate accounting for each individual QF project was too complex in 1991. However, there have been computing and technological advances since 1991 that make it entirely feasible to separately account for each QF's actual O&M costs. In fact, IPCo and other Idaho utilities assess actual O&M costs to interconnection customers under interconnections subject to the Federal Power Act, consistent with the Federal Energy Regulatory Commission's directives in its Order No. 2003 and Order No. 2006, issued in 2003 and 2006, respectively.

20. Additionally, actual O&M costs for QF interconnected interests instructs that annual, percentage-based charges in most, if not all, cases far exceed the actual O&M expenses for QF interconnection facilities, thus indicating that the average O&M on IPCo system-wide

transmission and distribution facilities is either inapplicable or inaccurate as a reflection of the cost of O&M actually performed on QF interconnection facilities.

21. The Schedule 72 O&M charges are not reasonable charges under the regulations for QF interconnections. In this context "interconnection costs" are those costs "directly related to the installation and of the physical facilities necessary to permit interconnected operations with a qualifying facility to the extent such costs are in excess of corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources." 18 C.F.R. § 292.101(7). The interconnection charges must also be reasonably assessed and non-discriminatory to the QF. *See* 18 C.F.R. § 292.303(c), § 292.306. In the case of IPCo, this Commission has "the responsibility and authority to ensure that the interconnection requirements are reasonable, and that associated costs are legitimately incurred." 45 Fed. Reg. at 12,230.

22. For the reasons set forth above and additional reasons Petitioners may present through testimony and other evidence, Petitioners allege that the Commission should modify its existing policy and orders approving of use the current regime for Schedule 72 O&M charges for QFs. Instead, the Commission should require IPCo to assess only the actual O&M costs expended by IPCo for each individual QF interconnection and be limited to the interconnection facilities of that QF, so that the O&M is neither arbitrary nor discriminatory.

IV.

PRAYER

WHEREFORE, Petitioners pray that the Commission order:

1. That the 90/110 Performance Band is no longer a just and reasonable requirement

for inclusion in ESAs offered to small hydropower, cogeneration, biomass, and baseload QFs.

2. That small hydropower, cogeneration, biomass, and baseload QFs that choose to enter into an ESA or otherwise legally enforceable obligation after the date of such order issued in this proceeding may elect to sell their electrical energy and capacity to electric utilities regulated by the Commission at forecasted, fixed avoided cost rates calculated at the time the obligation is incurred under 18 C.F.R. § 292.304(d)(2)(ii) under a long-term ESAs that does not contain the 90/110 Performance Band requirement.

3. That the O&M charges adopted by *Order No. 24025*, *Order No. 24172* and included in Idaho Power's Schedule 72 as of the date of this Petition are no longer a just and reasonable charge to assess to QFs subject to Schedule 72.

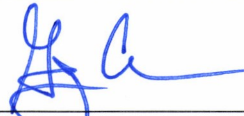
4. That Idaho Power shall revise Schedule 72 such that it only allows charges to QFs for actual O&M expenses at the time of occurrence.

DATED this 16th day of April, 2018.

ARKOOSH LAW OFFICES

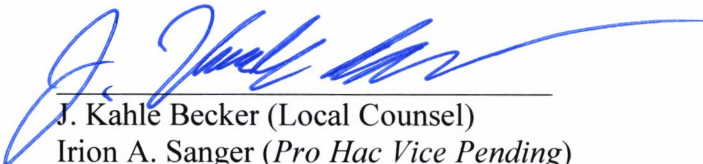
C. Tom Arkoosh
Attorney for Petitioners Idahydro & Shorock Hydro, Inc.

RICHARDSON ADAMS, P.L.L.C.



Gregory M. Adams
Peter J. Richardson
Attorneys for Petitioner J.R. Simplot Company

J. KAHLE BECKER ATTORNEY AT LAW
SANGER LAW P.C.



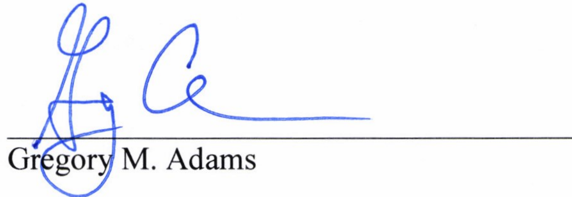
J. Kahle Becker (Local Counsel)
Irion A. Sanger (*Pro Hac Vice Pending*)
Attorneys for the Petitioners Renewable Energy Coalition

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 16th day of April, 2018, I served a true and correct copy of the foregoing document(s) upon the following person(s), in the manner indicated:

Original and 7 copies to:		
Diane Hanian	______	U.S. Mail, Postage Prepaid
Commission Secretary	______	Overnight Courier
Idaho Public Utilities Commission	__X___	Hand Delivered
472 W. Washington	______	Via Facsimile
Boise, ID 83702	______	E-mail
		diane.hanian@puc.idaho.gov

Copies to:		
Donovan Walker	__X___	U.S. Mail, Postage Prepaid
Idaho Power Company	______	Overnight Courier
PO Box 70	______	Hand Delivered
Boise, ID 83707	______	Via Facsimile
	__X___	E-mail dwalker@idahopower.com



Gregory M. Adams