

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: EDITH L. PACILLO
DEPUTY ATTORNEY GENERAL

DATE: MAY 1, 2018

SUBJECT: THE 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.

On April 16, 2018, Idahydro (“Idahydro”), Shorock Hydro, Inc. (“Shorock”), the J.R. Simplot Company (“Simplot”), and the Renewable Energy Coalition (“REC”) (collectively, “the Parties”) jointly petitioned to the 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.*

THE PETITIONERS

The Petitioners are Qualifying Facilities (“QFs”) under PURPA. The Petitioners either sell power to Idaho Power Company (the “Company”) under Energy Sales Agreements (“ESAs”), or are attempting to develop new QFs that would sell power to the Company. Application at 1-2. The Commission approved Petitioner Shorock’s ESA with the Company in Order No. 33549, subject to a stipulated motion that the Commission granted in Order No. 33918, that that ESA would be subject to the outcome of this Petition.¹

BACKGROUND

In Case No. IPC-E-04-10, certain QFs complained that the Company had proposed contract provisions that obviated the Company’s requirement to buy all of the output from the QFs at full avoided cost rates when the output is less than 90% or more than 110% of projected

¹ The ESA between Evergreen Energy Inc., and the Company, currently pending approval or rejection in Case No. IPC-E-18-04 also contains the 90/110 performance band, pending the outcome of this Petition.

output (the “90/110 performance band”). Order No. 29632 at 2-3. Further, the Company proposed pricing methods for energy deliveries that fell outside the 90/110 performance band. *Id.* at 14-15. In Order No. 29632, the Commission found that the 90/110 performance band was reasonable.² *Id.* at 20. The Commission ordered that energy delivered in excess of 110% of the contract amount (up to a 10 MW cap)³ should be priced at 85% of the Mid-C market or the contract price, whichever is less, and that the QF will receive no payment for energy delivered above the 10 MW cap. *Id.* The Commission ordered that energy delivered at less than 90% of the monthly commitment amount should be priced at 85% of the market price, or contract rate, whichever is less. *Id.*

Since 2004, the 90/110 performance band was an issue in several cases. *See generally*, Order Nos. 29880, 30000 30109, and 30206. In 2007, the Company asked the Commission to eliminate the 90/110 performance band requirement for ESA’s involving intermittent wind-powered QFs where certain conditions were met. In Order No. 30488, the Commission stated that, “The wind forecasting and mechanical availability guarantee in conjunction with other provisions of the Settlement in this case, we find, make elimination of the 90%/110% performance band reasonable.” *Id.* at 13. In parallel proceedings, the Commission also established a wind integration adjustment to published avoided cost rates and eliminated the 90/110 performance band for wind QFs that agree to provide a mechanical availability guarantee and share in the cost of wind forecasting services. *See* Order Nos. 30497 and 30500.

THE PETITION

Petitioners request that the Commission revisit the 90/110 performance band for non-wind QFs because:

1. Changed circumstances have obviated the need for a 90/110 performance band, including:
 - a. The variability of hydro QFs in the aggregate is within the range of variability exhibited by the Company’s hydropower facilities.

² The performance band did not apply to energy deliveries that fall below 90% due to forced outages or force majeure.

³ The 10 MW cap referred to the maximum monthly generation that qualifies for published rates. Order No. 29632 at 20. The cap was set as the total number of hours in the month multiplied by 10 MW. *Id.*

- b. Hydropower and other non-wind and non-solar QFs are sufficiently predictable in the aggregate that the Company can reasonably incorporate their variability into its planning and operations.
- c. The individual, non-wind and non-solar QF is so small in the Company's system that any monthly excess energy or shortfall energy amounts would be de minimis (lost in the "noise") of operating the Company's system.

2. It was not designed to address the unique situation regarding the predictable, aggregated value of small hydropower, biomass, cogeneration, and baseload QFs.

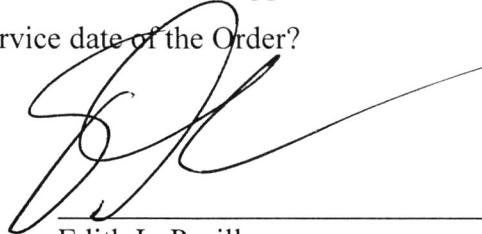
Therefore, the Petition alleges that the Commission should modify its existing policy and orders approving the 90/110 performance band's applicability to small hydropower, cogeneration, biomass, and baseload QFs that choose to enter into ESAs or other enforceable obligations. Petitioners allege that the Commission should instead allow such QFs to sell energy to Commission-regulated utilities at forecasted, fixed avoided rates calculated at the time the obligation is incurred, not at the time of delivery.

STAFF RECOMMENDATION

Staff recommends that the Commission issue a Notice of Petition and set a deadline for petitions to intervene of 21 days from the service date of the Order. After the intervention deadline has passed, Staff will confer with parties regarding a schedule for processing the case.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Application and set a deadline for petitions to intervene of 21 days from the service date of the Order?



Edith L. Pacillo
Deputy Attorney General