

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF

FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL

DATE: NOVEMBER 18, 2013

SUBJECT: IDAHO POWER'S TARIFF ADVICE NO. 13-05
IDAHO WIND PARTNERS COMPLAINT, CASE NO. IPC-E-13-19

On October 24, 2013, Idaho Power Company filed Tariff Advice No. 13-05 with the Commission seeking authority to update its Schedule 86. Although the tariff advice reflects an effective date of November 24, 2013, Idaho Power has agreed to waive the effective date in order to provide Staff sufficient time to propose an alternative procedure to process this matter.

THE TARIFF ADVICE

Idaho Power received notice regarding its subscription to the Dow Jones index from McGraw Hill Financial that as of close of business on Friday, September 13, 2013, the Dow Jones index has transitioned to Platts. Platts now provides the Non-Firm Mid-C electricity index information that was previously provided by Dow Jones. Idaho Power proposes that the reference in Schedule 86 to "Dow Jones" be changed to "Platts." Idaho Power further proposes removal of the language "published in the Wall Street Journal."

Idaho Power's tariff advice also adds the word "volume" before the words "weighted average" to provide additional clarity. Idaho Power asserts that the calculation has always used the volume-weighted average of the daily on-peak and off-peak Mid-C Index prices for non-firm energy to determine the appropriate avoided energy cost. The proposed change would clarify Idaho Power's current practice that the weighted average used to determine avoided energy costs under Schedule 86 is the *volume*-weighted average.

STAFF RECOMMENDATION

Staff has reviewed the filing and recommends the tariff advice be suspended and the case proceed by Modified Procedure. Idaho Power's Schedule 86 applies to QFs with a nameplate

capacity of less than 10 MW that choose to sell energy generated on a “non-firm, if, as, and when available basis.” However, the implications of Idaho Power’s proposed changes to its Schedule 86 potentially affect the calculation of avoided cost for surplus energy for numerous active QF contracts managed by the utility.

Schedule 86 reads:

Avoided Energy Cost is the weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Electricity Price Index (Dow Jones Mid-C Index) prices for non firm energy published in the Wall Street Journal. If the Dow Jones Mid-C Index prices are not reported for a particular day or days, the average of the immediately preceding and following reporting periods or days will be used.

Numerous QFs delivering power to Idaho Power pursuant to a long-term power purchase agreement have contracts containing similar language:

“‘Market Energy Cost’ – Eighty-five percent (85%) of the weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Index (Dow Jones Mid-C Index) prices for non-firm energy. . . .”

Idaho Power applies volume to both calculations – Avoided Energy Cost under Schedule 86 and Market Energy Cost pursuant to its QF agreements. The Commission’s consideration of volume-weighting as it applies to the calculation of Avoided Energy Costs under Schedule 86 necessarily implicates the calculation utilized to derive Market Energy Costs in numerous Idaho Power QF agreements. Consequently, Staff recommends that the Commission issue a Notice and allow any parties claiming a direct and substantial interest in the proceeding an opportunity to intervene.

Staff further recommends that the Complaint and Petition for Declaratory Order (“Complaint”) filed by Idaho Wind Partners I, LLC (“Idaho Wind”), against Idaho Power – Case No. IPC-E-13-19 – be merged with the tariff advice proceeding. Idaho Wind’s complaint seeks Commission interpretation and enforcement of certain provisions contained in its Firm Energy Sales Agreements (“FESAs” or “Agreements”) with Idaho Power. Specifically, Idaho Wind’s complaint focuses on Paragraphs 1.12 and 7.2 in its Agreements. Paragraph 7.2 of the Agreements states that, “For all Surplus Energy, Idaho Power shall pay to the Seller the current month’s Market Energy Cost or the Net Energy Purchase Price specified in paragraph 7.1, whichever is lower.” Agreements, ¶ 7.2. “Market Energy Cost” is defined in Paragraph 1.12 as “Eighty-five percent (85%) of the weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Index (Dow Jones Mid-C Index) prices for non-firm energy. If the Dow Jones Mid-Columbia Index price is discontinued by the reporting agency, both parties will mutually agree upon a replacement index, which is similar to the Dow Jones Mid-Columbia Index. The selected replacement index will be

consistent with other similar agreements and a commonly used index by the electrical industry.” Agreements, ¶ 1.12.

Idaho Wind states that Idaho Power’s calculation of Market Energy Cost fails to use Mid-C Index *daily* prices. Idaho Wind maintains that “Idaho Power’s calculation of Market Energy Cost considers only those on-peak and off-peak [non-firm] prices for which the Dow Jones Mid-C Index reports a volume.” Complaint at 5. Idaho Wind argues that the definition of Market Energy Cost in its Agreements does not include any reference to volume. Idaho Wind asserts that Idaho Power’s use of a volume weighting has resulted in significant damages to Idaho Wind. Specifically, for the period of January 2011 through September 2013, Idaho Wind argues that they have been underpaid by \$852,116 for Surplus Energy. Complaint at 7.

Staff recommends that Idaho Wind’s complaint be merged with the Schedule 86 proceeding because the considerations regarding the use of volume weighting to derive energy prices – whether in Schedule 86 or power purchase agreements – are the same. Further, Idaho Wind will not be the only QF impacted by the resolution of its complaint. It would be awkward and inconsistent for Idaho Power to compensate Idaho Wind differently than other QFs whose contracts include the same language. Merging the tariff advice case with Idaho Wind’s complaint is also the most judicious use of the Commission’s resources since the interpretation and application of the language in Schedule 86 is meant to be – and has in practice been – a reflection of the interpretation and application of the language in the QF contracts.

COMMISSION DECISION

1. Does the Commission wish to suspend Tariff Advice No. 13-05 and process the case by Modified Procedure?
2. If yes, does the Commission wish to issue a Notice and establish a 14 day deadline for intervention?
3. Does the Commission wish to merge the complaint of Idaho Wind into the case considering the proposed changes to Idaho Power’s Schedule 86?



Kristine A. Sasser
Deputy Attorney General

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