DECISION MEMORANDUM

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

FROM: **DAPHNE HUANG**
DEPUTY ATTORNEY GENERAL

DATE: **JULY 17, 2015**

SUBJECT: **IDAHO POWER'S PETITION TO DETERMINE THE CONTRACT-TERM ELIGIBILITY FOR DISAGGREGATED 100 KW SOLAR PROJECTS, CASE NO. IPC-E-15-18**

On June 26, 2015, Idaho Power Company filed a Petition with the Commission to determine the contract-term eligibility for ten solar projects proposed to Idaho Power by Site Based Energy under the Public Utility Regulatory Policies Act (PURPA). Specifically, the utility asks the Commission to issue an Order finding that Site Based Energy's ten 100 kilowatt (kW) projects are actually a single 1 megawatt (MW) project disaggregated into ten 100 kW increments. Accordingly, Idaho Power asks the Commission to find that Site Based Energy's project is only eligible for an IRP-based PURPA contract with a term of five years, or whatever maximum contract term the Commission sets in Case No. IPC-E-15-01, for which an Order is pending at the time its Petition was filed in this case.

BACKGROUND

A. PURPA

PURPA was passed as part of the National Energy Act of 1978. The Act's goals include the encouragement of electric energy conservation, efficient use of resources by electric utilities, and equitable retail rates for electric consumers, as well as the improvement of electric service reliability. 16 U.S.C. § 2601 (Findings). Under the Act, the Federal Energy Regulatory Commission (FERC) prescribes rules for PURPA's implementation. 16 U.S.C. § 824a-3(a), (b). State regulatory authorities such as the Idaho Public Utilities Commission implement FERC rules, but have "discretion in determining the manner in which the rules will be implemented." *Idaho Power Company v. Idaho PUC*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013), *citing FERC v. Mississippi*, 456 U.S. 742, 751 (1982)).

Under the Act, electric utilities must purchase electric energy from qualifying facilities (QFs) at rates approved by the applicable state regulatory agency – in Idaho, this Commission. 16 U.S.C. § 824a-3; *Idaho Power*, 155 Idaho at 789, 316 P.3d at 1287. The purchase rate for PURPA contracts must be "just and reasonable to the electric consumers . . . and in the public interest" and "shall not discriminate against [QFs]." 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304. Also, the purchase or "avoided cost" rate shall not exceed the "incremental cost" to the utility, defined as the cost of energy which, "but for the purchase from [the QF], such utility would generate or purchase from another source." 16 U.S.C. § 824a-3(d); 18 C.F.R. § 292.101(6) (defining "avoided cost").

B. Avoided Cost

The Commission has established two methods of calculating avoided cost, depending on the size of the QF project: (1) the Surrogate Avoided Resource (SAR) methodology, and (2) the Integrated Resource Plan (IRP) methodology. *See* Order No. 32697 at 7-8. The SAR methodology applies to wind and solar QFs with a design capacity of up to 100 kW, and up to 10 average megawatts (aMW) for QFs of all other resource types. *Id.* In other words, the "eligibility cap" for published rates for wind and solar QFs is set at 100kW and the cap for all other QF projects is set at 10 aMW. The Commission uses the SAR methodology to establish what is commonly referred to as published rates. *Id.* The IRP methodology applies to QFs with design capacity above the eligibility cap for published or "standard" rates. 18 C.F.R. 292.304(c). When a QF project is larger than the eligibility cap, the avoided cost rates for the project must be individually negotiated by the QF and the utility using the IRP methodology. Order Nos. 32697 at 2; 32176.

C. Contract Length

PURPA, and regulations implementing the Act, are silent as to contract length; consequently, the issue is in the Commission's discretion. *See Afton Energy, Inc. v. Idaho Power*, 107 Idaho 781, 785-86, 693 P.2d 427, 431-32 (1984); *Idaho Power*, 155 Idaho at 782, 316 P.3d at 1280. In January 2015, Idaho Power Company filed a petition in Case No. IPC-E-15-01, asking the Commission to reduce the length of new IRP-based PURPA contracts from 20 years to two years. The Commission granted temporary relief to Idaho Power (and also Avista and Rocky Mountain Power in cases consolidated with Idaho Power's) – reducing the contract term for IRP-based PURPA contracts to five years – while the Commission investigated the issue

of contract length. Order Nos. 33222, 33250. The contract term for SAR-based PURPA contracts remains at 20 years. Order No. 33253 at 4.

D. Disaggregation

In 2011, the Commission addressed the issue of disaggregation in the second phase of its generic PURPA investigation, Case No. GNR-E-11-01. In that case, the Commission stated that it "is supportive of all small power producers contemplated by PURPA, including wind and solar, and it is not the Commission's intent to push small wind and solar QF projects out of the market." Order No. 32262 at 4 (*citing* Order No. 32176 at 11). However, the Commission was

> . . . concerned that large QF projects were disaggregating into smaller QF projects in order to be eligible for published avoided cost rates that may not be just and reasonable to the utility customers or in the public interest. Order No. 32195 at 3. [Thus] the Commission asked the parties to provide information regarding how small wind and solar QFs could obtain a published avoided cost rate without allowing large QFs to obtain a rate that does not accurately reflect a utility's avoided cost for such projects.

Order No. 32262 at 4 (emphasis added). Pending its investigation of the implications of disaggregated QF projects, the Commission "temporarily reduce[d] the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar only." Order No. 32176 at 9 (emphasis original).

In Case No. GNR-E-11-01, the utilities argued that the best solution to "effectively eliminate the ability of large projects to disaggregate" was to maintain the 100 kW eligibility cap for wind and solar projects. Order No. 32262 at 5. A number of intervening parties supported "devising a framework where small QF projects could obtain a published rate for projects producing 10 aMW or smaller but disallow larger QF projects from obtaining a published rate that is not an accurate reflection of the utility's avoided cost." *Id.* at 6. One intervenor argued the Commission should reinstate the 10 aMW eligibility cap for wind and solar projects. *Id.*

In its decision, the Commission stated, "We find that any attempt to implement criteria in an effort to prevent disaggregation would be met by attempts to circumvent such criteria," noting that "[t]he economic incentive for [disaggregated] projects is obvious." *Id.* at 8. The Commission thus determined it was "appropriate to maintain the 100 kW eligibility cap for published avoided cost rates for wind and solar QFs." *Id.*

THE PETITION

In its Petition, Idaho Power states it received "submissions for ten 100 kW PURPA solar QF projects, all from the same developer, John Reuter, from Site Based Energy." Petition at 2, Attachment Nos. 1-10. The Company states, "These ten projects are all located at the same site, on the same contiguous property, and divided into ten sections." *Id.* According to Idaho Power, "Each Application appears to be nearly identical, except for the differing Name of Facility, WRCE 1 through 10, respectively, and the corresponding GPS coordinates for each project." *Id.*.

Idaho Power notes that "[e]ach Application requests a contract term of 20 years, requests published avoided cost rates, and states, 'The facility will be owned by a separate owner than all other facilities within 1 mile, including other facilities at the same site.'" *Id.* at 4 (*citing* Exhibit Nos. 1-10, Applications at 2). The Company provides that it "has not been provided with any evidence of separate ownership, nor was Idaho Power able to confirm that the proposed entities are registered with the Idaho Secretary of State." *Id.* at 4.

Idaho Power asserts, "Site Based Energy has specifically designed and proposed its project – disaggregated into 100 kW increments – in an attempt to avoid application of the Commission's interim order limiting the maximum contract term to five years." *Id.* at 3. Idaho Power therefore asks the Commission to "direct that the five year maximum contract term limitation currently in place for projects over the published rate eligibility cap be applicable to these ten 100 kW disaggregated solar projects." *Id.*

Idaho Power made no recommendation as to how the matter should be processed.

STAFF RECOMMENDATION

Staff has reviewed the petition and recommends that the matter be processed by modified procedure with a 21-day comment period.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Petition and Notice of Procedure setting a 21-day comment period?

Daphne Huang
Daphne Huang
Deputy Attorney General

M:IPC-E-15-18_djh