

DECISION MEMORANDUM

TO: **COMMISSIONER KJELLANDER**
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FROM: **CAMILLE CHRISTEN**
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DEPUTY ATTORNEYS GENERAL

DATE: **MARCH 15, 2017**

SUBJECT: **THE PETITION OF IDAHO POWER COMPANY FOR A DECLARATORY ORDER REGARDING PROPER CONTRACT TERMS, CONDITIONS, AND AVOIDED COST PRICING FOR BATTERY STORAGE FACILITIES, CASE NO. IPC-E-17-01**

On February 27, 2017, Idaho Power Company petitioned the Commission for a declaratory order regarding proper contract terms, conditions, and avoided cost pricing for battery storage facilities under the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Company states that it has received requests for avoided cost pricing under PURPA for five proposed battery storage facilities. According to the Company, the proposed battery storage facilities claim that they are entitled to published avoided cost rates under PURPA with a 20-year contract term. The Company asserts that the proposed facilities should instead be subject to the 100 kW published rate eligibility cap applicable to wind and solar qualified facilities.

The Company asks the Commission to issue a declaratory order directing that proposed battery storage facilities over 100 kW are eligible for negotiated avoided cost rates determined by the incremental cost Integrated Resource Plan (IRP) methodology and a maximum two-year contract term. The Company also asks that the declaratory order direct that proposed battery storage facilities with a maximum nameplate capacity of 100 kW are entitled to published avoided cost rates and a maximum 20-year contract term. The Company served the petition on the representatives of the five battery storage facilities via US Mail and e-mail on February 27, 2017.

BACKGROUND

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 Pub. Util. Comm.*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013) (*citing F.E.R.C. v. Mississippi*, 456 U.S. 742, 751 (1982)).

PURPA requires electric utilities, unless otherwise exempted, to purchase electric energy from "qualifying facilities" (QFs) as defined under the Act. 16 U.S.C. § 824a-3; *see also* 18 C.F.R. § 292.101, 292.303(a). In Idaho, the Commission must approve the purchase rate in a utility's contract to buy QF energy under PURPA. *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 rate shall not exceed the "incremental cost" to the utility, defined as the incremental cost of electric energy or capacity which, "but for the purchase from [the QF], such utility would generate itself or purchase from another source." 16 U.S.C. § 824a-3(d); 18 C.F.R. § 292.101(6) (defining avoided costs). The length of the purchase contract is left to the Commission's discretion; PURPA and FERC's implementing regulations are silent with regard to contract term.¹ *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.

This Commission has established two methods of calculating avoided costs, 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 Commission uses the SAR methodology to establish what is commonly referred to as "published" or standard avoided cost rates. *Id.*; 18 C.F.R. § 292.304(c). Published rates are available for wind and solar QFs with a design capacity of up to 100 kilowatts (kW), and for QFs

¹ Since PURPA was implemented in Idaho, the Commission has periodically modified the length for PURPA contracts. *See Order No. 29029*. Initially, the Commission established a maximum contract term of 35 years, which it shortened to 20 years in 1987. Order Nos. 21018, 21630. The term was reduced to five years in 1996, and raised back to 20 years in 2002. Order Nos. 26576, 29029. In 2015, the Commission adopted the current two-year term for individually-negotiated IRP-based contracts. Order Nos. 33357, 33419.

of all other resource types with a design capacity of up to 10 average megawatts (aMW). Order No. 32697 at 13-14. The Commission has adopted a term of 20 years for published rate contracts. *See id.* at 24-25; Order No. 33314 at 11. For QFs with a design capacity above the published rate eligibility caps, avoided cost rates are individually negotiated by the QF and the utility using the IRP methodology based on the specific characteristics of the resource. *See* Order Nos. 32697 at 2; 32176 at 1. The Commission has adopted a term of two years for individually-negotiated IRP-based rate contracts. Order Nos. 33357 at 25; 33419 at 19.

Procedural Rules 101 and 102 provide for the issuance of declaratory rulings by the Commission. IDAPA 31.01.01.101 and .102. Pursuant to Rule 101, persons seeking a declaratory ruling must state the ruling that the petitioner seeks, set out the factual allegations, and indicate the statute or other controlling law pertaining to the petition. IDAPA 31.01.01.101.02. Rule 102 provides that the notice of the petition for a declaratory ruling will be issued to all affected utilities. IDAPA 31.01.01.102.

STAFF RECOMMENDATION

The Company did not suggest a method for processing its Petition. Staff recommends that the Commission issue a Notice of Petition and Notice of Modified Procedure, with the following schedule:

- April 5 Comments due from the proposed battery storage facilities identified in the Petition (Franklin and Black Mesa)
- April 27 Comments due from all other interested persons or parties, including Commission Staff and any potentially-affected utilities
- May 11 Reply comments, if any, due from all interested persons and parties

COMMISSION DECISION

Does the Commission wish to issue a Notice of Petition and Notice of Modified Procedure, with comments due as shown above?



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