

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S)	
REVIEW OF PURPA QF CONTRACT)	CASE NO. GNR-E-11-03
PROVISIONS INCLUDING THE)	
SURROGATE AVOIDED RESOURCE (SAR))	
AND INTEGRATED RESOURCE PLANNING)	
(IRP) METHODOLOGIES FOR)	ORDER NO. 32737
CALCULATING AVOIDED COST RATES.)	
)	

On December 18, 2012, the Commission issued final Order No. 32697 deciding various issues related to avoided cost rate methodologies and other issues regarding Public Utility Regulatory Policies Act (PURPA) contracts. On January 8, 2013, Idaho Power Company, Renewable Northwest Project, Renewable Energy Coalition, Idaho Conservation League and J.R. Simplot/Clearwater Paper filed timely requests for reconsideration/clarification.

Commission Staff and Idaho Wind Partners filed timely answers to the petitions. Idaho Power filed what it captioned as a "Response and Cross-Petition" within the time allowed for answers. On January 22, 2013, Mountain Air Projects filed an untimely answer to the petitions. On January 23, 2013, the Canal Companies filed what was captioned as a "Reply" to Idaho Power's Response and Cross-Petition. Based upon our review of the Petitions for Reconsideration/Clarification, the answers and the underlying record in this case, we partially grant reconsideration/clarification and partially deny reconsideration/clarification as set out in greater detail below.

ISSUES ON RECONSIDERATION

A. Legal Standards

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by reviewing the existing record, by written briefs, or by evidentiary hearing. IDAPA 31.01.01.332. If reconsideration is granted, the record must be finally submitted within 13 weeks after the deadline for filing petitions for reconsideration. *Idaho Code*

§ 61-626(2). The Commission must issue its Order upon reconsideration within 28 days after the matter is finally submitted for reconsideration. *Id.*

Consistent with the purpose of reconsideration, the Commission's procedural rules require that petitions for reconsideration "set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law." Rule 331.01, IDAPA 31.01.01.331.01. Rule 331 further requires that the petitioner provide a "statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." *Id.*

B. Renewable Energy Credits

Three parties petitioned the Commission to reconsider its decision regarding the ownership and allocation of renewable energy credits (RECs). Renewable Northwest Project (RNP), Idaho Conservation League (ICL), and Simplot/Clearwater all objected to the Commission's decision that ownership of RECs be equally apportioned between the utility and the QF for projects that are priced under the IRP avoided cost pricing methodology. Order No. 32697 at 46. The three petitioners argued that the Commission's REC decision "lacks an adequate legal foundation" (RNP at 1); is unreasonable, unlawful and erroneous (Simplot/Clearwater at 11); and is an abuse of discretion (ICL at 1). In addition, ICL asserted in its Petition that the Commission does not have subject matter jurisdiction to determine the ownership and allocation of RECs. ICL and RNP requested that the Commission schedule additional legal briefing if reconsideration was granted on this issue.

Idaho Power filed a Response and Cross-Petition for Reconsideration addressing the REC issue raised by the three petitioners. *See* Rule 331.02. Idaho Power argued that the Commission "clearly has subject matter jurisdiction" to determine the REC issue. Response/Cross-Petition at 17. In addition, Idaho Power argued that the Commission should deny reconsideration of the REC issue on the merits. *Id.* at 19. If the Commission grants reconsideration Idaho Power stands ready to present further evidence and legal argument to support its Cross-Petition that "the utility be determined the owner of RECs." *Id.*

Commission Findings: The Commission grants reconsideration on the issue of RECs. We find that the petitioners primarily raise issues of law so further evidence is not necessary. *See* Rule 332. Although the Commission has decided to reconsider its REC decision, we do not seek further legal briefing on this issue. The REC issue has already been the subject

of extensive legal briefing by the parties in this case. In particular, the three petitioners and the cross-petitioner have previously submitted extensive legal briefs addressing REC ownership. In addition, the three parties seeking reconsideration do not raise new legal issues for us to consider. Consequently, we will reconsider the REC issue and review Order No. 32697 based on the existing record and previously filed legal arguments. *See* Rule 284.01.

C. Canal Drop Hydro/Resource-Specific Capacity Factors

Renewable Energy Coalition filed a Petition for Clarification regarding the Commission's definition of what qualifies as a "canal drop hydro" project. Order No. 32697, Attachment A defines "canal drop hydro" as "a generation facility which produces a majority of its generation during the irrigation season and is located on a man-made waterway that conveys water primarily intended for irrigation or that primarily conveys irrigation return flows." The Coalition, in asking for clarification, proposed an alternative definition of canal drop hydro. Specifically, the Coalition maintains that a requirement that water be conveyed through or over a "man-made waterway" does not have any meaningful correlation to the timing of when the power is produced, or the value of the power. Petition at 3.

Commission Staff argued in its answer that the capacity factor assumptions for canal drop hydro are reasonable and went unchallenged during the course of this case. Staff opposed the definitional changes recommended by the Coalition. However, Staff proposed that the Commission allow the parties to explore the issue more fully on reconsideration.

Idaho Power also opposed the Coalition's proposed changes. Idaho Power explained that the source of the water is less important than when it generates and delivers energy to the utility. Idaho Power proposed that "only those canal drop hydro projects whose off-season, off-peak generation is *de minimis* when compared to their in-season, on-peak generation be qualified to receive the higher capacity factor. . . ." Response at 8. Idaho Power suggested that the definition could be left undisturbed and projects seeking canal drop hydro rates be considered on a case-by-case basis. *Id.* Idaho Power's initial Petition for Reconsideration addressed the issue of resource-specific capacity factors. In its Response, Idaho Power requested clarification regarding the capacity factors utilized in the SAR model for only the "canal drop hydro" and "other" project categories.

Commission Findings: After reviewing the arguments presented by the parties, we grant reconsideration of the canal drop hydro issues raised. We also grant reconsideration/

clarification regarding the capacity factor utilized in the SAR model for “other” projects. Canal drop hydro has a separate, higher, set of rates because irrigation-related projects provide capacity when the utility most needs it – during the peak hours of the peak days of the year (i.e., during the summer season). The issues surrounding the definition of canal drop hydro and resource-specific capacity factors were not explored at hearing. The parties focused on other issues. Therefore, we find it appropriate to grant reconsideration to allow for discovery and comments on the narrow issues of: (1) definition of canal drop hydro, and (2) capacity factors as they relate to “canal drop hydro” projects and “other” projects under the SAR methodology.

In order to accommodate the compressed timeframe of review on reconsideration, we direct the parties to provide answers to production requests within 14 days. Initial comments must be filed no later than March 25, 2013, with reply comments due no later than April 8, 2013.

D. Contract Extension/Renewal Language

Both Idaho Power and Renewable Energy Coalition sought clarification of the Commission’s findings regarding contract extensions and renewals. Idaho Power requested that the Commission clarify that it “did not intend to authorize any contract extensions or renewals, where those contracts do not provide for any renewal or extension of the term of the agreement.” Petition at 6. The Coalition requested clarification “as to the published avoided cost rates for QFs that have existing contracts that will be expiring. . . .” Petition at 2. The Coalition suggested that clarification could be accomplished by providing attachments showing published rates for existing QFs seeking a contract renewal or extension – which would include capacity payments in the initial years of capacity sufficiency. *Id.*

In answer to Idaho Power’s concern, Commission Staff recommended that the Commission refer to expiring contracts for projects that will continue to generate and sell energy as “replacement contracts” or “new contracts for existing projects.” In response to the Coalition’s request, Staff proposed that it maintain the capability to compute rates for replacement contracts upon request. Staff explained that the SAR model could be modified to include the capability to compute published avoided cost rates to be included in contracts for either new QFs or for existing QFs seeking to replace expiring contracts. Answer at 2. However, a full set of rate tables would comprise of 30 pages. To avoid confusion, Staff proposed that it be directed to provide such information to interested parties upon request.

Commission Findings: The Commission grants clarification of its “contract renewal” and “extension” language. In Order No. 32697, we did not implicitly or explicitly authorize contract extensions or renewals for existing contracts that do not contain such provisions. Unless the contract provides for renewal, it is axiomatic that a new contract must be negotiated between the parties. However, when an existing QF under a current contract desires to continue to sell energy to the same utility after expiration of the current contract, and the parties enter into a new contract for the sale and purchase of energy, the QF is entitled to be paid capacity for the full term of the new agreement. Order No. 32697 at 21, 22.

In order to address the Coalition’s concerns about access to published rate tables for replacement contracts, the Commission grants clarification on this issue. We direct Staff to modify the SAR model to include the capability to compute rates for existing QFs seeking to replace expiring contracts. In order to avoid confusion that might result from 30 pages of attachments, we direct Staff to provide rates for replacement contracts upon request by any interested party.

E. Curtailment

Idaho Power requested clarification of the Commission’s findings regarding curtailment pursuant to 18 C.F.R. § 304(f). Specifically, “Idaho Power does not believe the Commission intended to state that the parties did not contemplate compliance with the law – with FERC rules and regulation [sic] – when entering into their respective power purchase agreements under PURPA.” Petition at 5.

Idaho Wind Partners maintained in its answer that Idaho Power’s request was both unnecessary and unsupported by the record.¹ Answer at 1. Consequently, Idaho Wind Partners requested that the Commission deny Idaho Power’s request to clarify any language regarding 18 C.F.R. § 304(f) and curtailment.

Commission Findings: The Commission denies Idaho Power’s request to clarify the Commission’s findings regarding curtailment and the application of 18 C.F.R. § 304(f). In Order No. 32697, the Commission made no findings regarding the parties’ intent, or lack thereof, to comply with federal law. On the contrary, the Commission observed that each power purchase agreement contains a reference to the applicable federal rules and regulations. Order No. 32697

¹ On January 22, 2013, Mountain Air Projects filed an answer to Idaho Power’s request to clarify the Commission’s curtailment findings. Pursuant to *Idaho Code* § 61-626(1), Mountain Air had until January 15, 2013, to file its answer. Because its answer was untimely, it will not be considered.

at 36. The Commission clearly stated that the need to curtail under the circumstances contemplated by 18 C.F.R. § 304(f) has only become an issue in Idaho over the last several years. *Id.* Ultimately, Idaho Power’s proposed curtailment tariff was rejected by the Commission because it was too vague and adoption of such a tariff was not adequately supported by the evidence produced during the underlying proceedings. *Id.*

F. Updates to Gas and Load Forecasts

In our final Order we determined that the natural gas price forecast used in the SAR model and the fuel and load forecasts used in the IRP Methodology should be updated every June 1 utilizing data from the EIA’s Annual Energy Outlook. Order No. 32697 at 52. Idaho Power requested clarification of the Commission’s determination regarding fuel and load forecast updates in two respects. First, Idaho Power proposed that the Commission consider updating the SAR model “immediately upon release of the specifically designated EIA natural gas price forecast” instead of waiting until June 1 in order to avoid “gamesmanship.” Petition at 8. Second, Idaho Power stated that the Company does not update its fuel and load forecasts utilized in the IRP Methodology until October of each year. Consequently, Idaho Power requested that annual updates to the fuel and load forecasts utilized in its IRP Methodology be set for a different date.

Commission Staff recommended that the Commission maintain the June 1 date for annual updates of the EIA gas forecast used in calculating the SAR rates, but add the qualifier “or within 30 days of the final release of the EIA Annual Energy Outlook, whichever is later” to accommodate for years when the release by EIA is too late to meet a June 1 update. Staff noted that any timeline could still allow opportunities for gamesmanship. As to the timeline for updating the gas and load forecasts used in the IRP models, Staff recommended that the three utilities collaborate and propose a suitable and uniform date for the utilities to update the gas and load forecasts used in their IRP methodologies. Answer at 6.

Commission Findings: The Commission grants clarification on the issue of annual updates to the utilities’ gas and load forecasts. The Commission finds that a single date for annually updating both the SAR and IRP methodologies is not required. However, to avoid confusion, ensure consistency, and alleviate gamesmanship, we find it necessary for all three utilities to update their annual SAR gas forecast on the same date, and to also update their annual IRP forecasts on a uniform date. We find that the final release of EIA’s Annual Energy Outlook

is the appropriate report to utilize for updates to the SAR Methodology's gas forecast. Although we anticipate that the final release of the EIA data will occur each year in time to meet a June 1 update to SAR-based avoided cost rates, we find it reasonable to further clarify that the annual update of the EIA gas forecast should occur on June 1 or within 30 days of the final release of the EIA Annual Energy Outlook, whichever is later.

Turning to the question of when to update the IRP methodologies, we direct the three utilities to collaborate and propose, within 28 days from the service date of this Order, a suitable date for all three utilities to update their gas and load forecasts used in their IRP methodologies. If the utilities are unable to agree to a uniform date for updating their IRP gas and load forecasts, they shall so advise the Commission and the Commission will subsequently decide.

G. Incremental Costs

Simplot/Clearwater requested reconsideration of Commission-ordered modifications to how the IRP Methodology calculates avoided costs. Specifically, Simplot/Clearwater maintained that the Commission's final Order "approved sweeping changes in how avoided cost rates are set using the IRP methodology." Petition at 5. Simplot/Clearwater argued that the Commission's adoption of Idaho Power's proposed "single-run" methodology deprives QFs of compensation based on the utility's full avoided cost. *Id.* at 10.

Commission Staff maintained that the Commission's choice to move to an approach that focuses on identifying the hourly incremental costs that would be avoided by the addition of a QF to a utility's system is not contrary to PURPA. Staff argued that Simplot/Clearwater failed to demonstrate that the approach adopted by the Commission results in less than the utility's full avoided cost. Staff maintained that Simplot/Clearwater is simply dissatisfied with the Commission's finding.

Idaho Power maintained that Simplot/Clearwater's argument regarding changes to the IRP Methodology was flawed. Idaho Power explained that just because the Commission found the previously approved IRP Methodology reasonable, it does not hold that a change to the methodology is unreasonable. Response at 13. Idaho Power argued that basing the avoided cost calculation on incremental cost "better aligned with FERC's definition of avoided cost because it focuses upon the incremental cost the utility would incur but for the purchase from the QF." *Id.* at 14.

Commission Findings: The Commission denies reconsideration of its findings regarding use of incremental costs in determining avoided costs under the IRP Methodology. The Commission provided a full and fair opportunity to address the issue. Simplot/Clearwater fails to establish how an approach that focuses on identifying the hourly incremental costs that a utility avoids by the addition of a QF to its system results in less than a full avoided cost as required by PURPA and FERC regulations. Simplot/Clearwater may disagree with the Commission's decision to modify calculation of avoided costs under the IRP Methodology, but it has not demonstrated that the Commission's finding is unreasonable, erroneous, or contrary to law. Moreover, the Commission's decision is supported by substantial and competent evidence.

H. Determination of Capacity Deficiency

In its response, Idaho Power noted that, while the Company first shows a capacity deficiency in July 2014, it is a deficiency of approximately one megawatt occurring for one hour. According to Idaho Power's 2011 IRP filing, the first resource addition is the Boardman to Hemingway project in 2016. Response at 10. Idaho Power requested clarification as to why its capacity payments in the published rate tables begin in 2014. *Id.*

Commission Findings: We grant Idaho Power's request for clarification regarding the Commission's determination of capacity deficiency. The SAR model recognizes not only the timing of when the first deficit occurs, but also the magnitude of the deficit. The SAR model values capacity based only on the amount of capacity that is useful to the utility. In other words, if only a portion of a QF's capacity is needed in the initial years to fully satisfy the utility's deficit, then credit is only given for that portion. As the utility's deficit grows, increasing amounts of the QF's capacity are given credit until the year when the utility's deficit exceeds the QF's capacity, when full value for the QF's capacity is given.

ORDER

IT IS HEREBY ORDERED that the Petitions for Reconsideration and/or Clarification are granted in part and denied in part. The Commission grants reconsideration to Renewable Northwest Project, ICL, and Simplot/Clearwater on the issue of REC ownership without further submissions. The Commission will also consider Idaho Power's Cross-Petition on this issue.

IT IS FURTHER ORDERED that the Petitions for Clarification of Renewable Energy Coalition and Idaho Power regarding the definition of canal drop hydro and the determination of

resource-specific capacity factors for “canal drop hydro” and “other” projects is granted. The parties may engage in discovery and file initial and reply comments as more fully described in the body of this Order.

IT IS FURTHER ORDERED that the Petitions for Clarification filed by Idaho Power and Renewable Energy Coalition on the issues of contract renewal/extension and the published rate tables associated with such replacement contracts are granted, as set out above.

IT IS FURTHER ORDERED that Idaho Power’s Petition for Clarification regarding the date for updating the utilities’ gas forecast in the SAR models and fuel and load forecasts in the IRP methodologies is granted. The utilities shall comply with the Commission’s instructions as more fully described in the body of this Order.

IT IS FURTHER ORDERED that Idaho Power’s Petition for Clarification and/or Reconsideration regarding curtailment is denied.

IT IS FURTHER ORDERED that Simplot/Clearwater’s Petition for Reconsideration on the issue of calculating incremental costs under the IRP Methodology is denied.

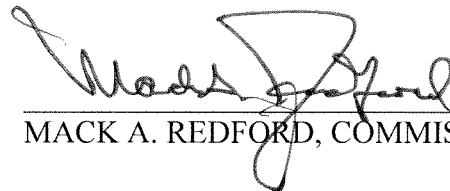
IT IS FURTHER ORDERED that Idaho Power’s Petition for Clarification regarding the Commission’s determination of a utility’s capacity deficiency is granted, as set out above.

THIS IS A PARTIAL FINAL ORDER ON RECONSIDERATION. The issues of contract renewal/extension, curtailment, incremental costs, and determination of capacity deficiency have been finally decided in this Order and may be appealed to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 5th
day of February 2013.



PAUL KJELLANDER, PRESIDENT




MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary