



(“PURPA”). Eight of the projects have contracts that contain published, non-levelized, avoided cost rates. Three of the projects have contracts that contain published, levelized, avoided cost rates. The eight non-levelized contracts are the subject of Idaho Wind Partners’ complaint.<sup>1</sup>

All 11 contracts were approved by the Commission. However, the eight non-levelized contracts were entered into and approved by the Commission prior to the Commission’s adoption and implementation of a wind integration charge. Consequently, those eight wind projects pay no wind integration charge or wind forecasting fees and contain provisions for a 90%/110% performance requirement. The three levelized contracts contain wind integration charges and forecasting fees as well as provisions for a Mechanical Availability Guarantee (“MAG”).

#### ***A. Idaho Wind’s Complaint***

Idaho Wind’s complaint sought “interpretation and enforcement of certain 2005-era Firm Energy Sales Agreements” between Idaho Power and projects owned by Idaho Wind. Complaint at 1. Idaho Wind claimed that Idaho Power was not paying market energy costs for Idaho Wind’s surplus energy. Idaho Wind maintained that Idaho Power’s failure to pay its projects’ market energy costs was a violation of the plain language of the Agreements and resulted in significant damages to Idaho Wind.

The FESAs at issue define “Market Energy Cost” 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.” Agreements ¶ 1.12. Idaho Wind argued that Idaho Power’s calculation of market energy cost only took into account a subset of “the daily on-peak and off-peak . . . prices for non-firm energy” because Idaho Power only considered on-peak and off-peak prices for which the Dow Jones Mid-C Index reported a volume. Complaint at 5. Idaho Wind asserted that “the Dow Jones Mid-C Index publishes a daily on-peak price and a daily off-peak price for non-firm energy, regardless of market liquidity” and that the parties expressly agreed to use the Index’s daily prices to calculate market energy costs. *Id.* at 6. Idaho Wind argued that, contrary to Idaho Power’s calculation method, the definition of Market Energy Cost in its Agreements does not include a reference to volume. *Id.*

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<sup>1</sup> Thousand Springs Wind Park, LLC; Pilgrim Stage Station Wind Park, LLC; Oregon Trail Wind Park, LLC; Tuana Gulch Wind Park, LLC; Golden Valley Wind Park, LLC; Burley Butte Wind Park, LLC; Milner Dam Wind Park LLC; and Salmon Falls Wind Park, LLC.

Idaho Wind stated that Idaho Power's failure to purchase its surplus energy at market energy costs has resulted in significant damages to Idaho Wind. Idaho Wind claimed that, between January 2011 and September 2013, it was underpaid by \$852,116 for surplus energy. Idaho Wind asked that the Commission declare that Idaho Power breached its Agreements by failing to pay Idaho Wind for its surplus energy pursuant to the terms of the FESAs. Idaho Wind also requested reimbursement for the alleged underpayment of its surplus energy, interest on amounts underpaid, and reasonable attorney and expert witness fees and costs.

***B. Idaho Power's Answer and Cross-Complaint***

Idaho Power filed an Answer and Cross-Complaint to Idaho Wind's complaint on November 29, 2013. Idaho Power argued that this case "is about much more than simply the meaning of contractual language. This case involves the Idaho Public Utilities Commission's ("Commission") determination as to the appropriate avoided cost rates in the state of Idaho and eligibility for the same." Answer at 1. Idaho Power explained that none of the eight Idaho Wind Agreements in dispute pay a wind integration charge or wind forecasting fees. "Instead, [each project] must estimate their own generation amounts in advance, and then deliver generation within a band of 90 percent to 110 percent of their own estimation in order to receive the full avoided cost rate in [each Agreement]." *Id.* at 2. If the project delivers energy outside this band, aka surplus energy, then the project receives the market energy cost "which is set at the avoided cost rate for deliveries priced as-delivered." *Id.*

Idaho Power denied that it uses a subset of the Dow Jones prices and denied that its use of the Dow Jones prices violates the express language of its Agreements with Idaho Wind. Idaho Power further "denied that the use of prices for actual transactions distorts the price." *Id.* at 8. Idaho Power maintained that it utilizes a calculation that accurately reflects the daily values of the non-firm energy received and market price reported because "prices with no traded volumes do not reflect the market price as no buyer is willing to pay that price for non-firm, unscheduled energy." *Id.* Idaho Power asserted that any damages suffered by Idaho Wind were of its own creation. *Id.* at 9.

Idaho Power's Cross-Complaint requested that the Commission confirm Idaho Power's calculation of non-firm avoided cost rates for surplus energy and issue an Order authorizing Idaho Power to use the Platts Index as a replacement for the now discontinued Dow Jones Index in determining the value of surplus energy in various firm energy sales agreements.

### ***C. Idaho Wind's Answer to Idaho Power's Cross-Complaint***

Idaho Wind filed an answer to Idaho Power's Cross-Complaint on December 20, 2013. Idaho Wind alleged that the continued use of the Platts Index utilizing Idaho Power's calculation of market energy costs would result in millions of dollars in damages over the remaining life of its Firm Energy Sales Agreements. Idaho Wind noted that the Agreements require that the parties "mutually agree upon" a replacement index for the Dow Jones Mid-C. Idaho Wind does not object to the use of Platts as a replacement index "so long as the Commission orders Idaho Power to calculate Market Energy Price using the monthly average of all published daily prices, weighted by the number of on-and off-peak hours in the day." Answer at 4.

### **THE STIPULATION AND SETTLEMENT**

The parties met on December 19, 2013, for confidential settlement discussions. The parties reached agreement on all issues related to the underlying complaint in Case No. IPC-E-13-19. Based upon the settlement discussions, and as a compromise of the respective positions of the parties, the parties agreed to the following terms:

Performance Requirements of the FESAs. The Parties agreed that the eight non-levelized contracts shall be amended to remove the 90%/110% performance requirement and to replace such requirement and provisions with provisions for a MAG. All eight contracts contain identical language and provisions and thus will all be amended in the same way. Attached as Attachment 1 to the Settlement Stipulation are the eight Amendments to each of the eight non-levelized contracts. Also attached as Attachment 2 to the Settlement Stipulation is a red-lined version of one of the identical eight non-levelized contracts showing the insertions and deletions in red-line format for everyone's convenience. With this Motion the Parties seek Commission approval of the Settlement Stipulation and each of the eight Amendments to the FESAs as submitted with the Settlement Stipulation.

Wind Integration Charge and Wind Forecasting Fees. The Parties agreed that the eight non-levelized contracts will be amended to include a \$6.50 Mills/kWh wind integration charge and the current wind forecasting fees for the remaining term of those contracts. See Attachment 1 and 2.

Idaho Wind Partners' Complaint. The Parties agreed to dismiss Idaho Wind Partners' pending Complaint and Idaho Power's pending Cross-Complaint in IPUC Case No. IPC-E-13-19, and to fully, finally, and forever release, discharge, and not sue each other for any and all claims and causes of action arising from or relating to the allegations in the Complaint

and Cross-Complaint in IPUC Case No. IPC-E-13-19 as more fully set forth in the Settlement Stipulation.

Change in the Wind Integration Charges. Idaho Power agreed not to seek, support, or take any action that would change or impose any similar such wind integration charge to be assessed to the eight non-levelized contracts pursuant to this Settlement Stipulation or to the currently assessed wind integration charge for the three levelized contracts, either as part of the current case seeking to update Idaho Power's wind integration rates and charges, IPUC Case No. IPC-E-13-22, or any other subsequent case or proceeding. The Parties agreed that the current and stated wind integration charge for Idaho Wind Partners' eleven existing and amended contracts remain fixed for the remaining term of those respective agreements.

Effective Date. The Parties agreed that the effective date for the Settlement Stipulation and for the amended eight non-levelized contracts shall be January 1, 2014. Unless and until the Commission approves the Settlement Stipulation and the amendments to each contract, the Parties agreed to continue operating and abiding by the terms and conditions contained in the FESAs without the proposed amended terms and conditions; however, such agreement is merely for the convenience of the Parties pending approval of this Settlement Stipulation and shall not be deemed acceptance of, or a waiver of any rights or arguments as to, the payments due or other terms related to the FESAs. Within thirty (30) days of Commission approval and the expiration of any appeal period or resolution of any appeal, the Parties will make any accounting adjustments and payments necessary to have the amended terms and conditions take effect on January 1, 2014.

The Settlement Stipulation contains a provision stating that all terms and conditions of the Settlement Agreement are subject to approval by this Commission and that only after such approval, without material change or modification, has been received shall the Settlement Agreement be valid. The parties state that the Settlement Stipulation is a fair, equitable, and final resolution to this matter and others between the parties, and is in the public interest.

### **FINDINGS AND CONCLUSIONS**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, and the issues raised in this matter pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric

utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities (QFs) and to implement FERC rules.

In this case, the parties entered into a Settlement Stipulation agreement. Our Procedural Rule 276 recognizes that the Commission is not bound by the parties' settlement agreement. The Commission may accept, reject, or amend a proposed settlement. IDAPA 31.01.01.276. The Commission will independently review any settlement to determine whether it is fair, just and reasonable; in the public interest; or otherwise in accordance with law or regulatory policy. *Id.* Furthermore, the proponents of a proposed settlement have the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. IDAPA 31.01.01.275.

The parties assert that the Settlement Stipulation is fair and equitable. The parties maintain that the Settlement Stipulation is a reasonable resolution of all issues related to the Complaint filed by Idaho Wind Partners and Cross-Complaint filed by Idaho Power. The parties state that it is also in the public interest for the Commission to approve the settlement.

Based upon our review of the record developed in this case and the Settlement Stipulation presented by the parties, we find that the settlement represents a reasonable compromise of the original positions of the parties. We commend the parties for resolving their dispute amicably and without the need for costly and lengthy litigation. We also find that the Settlement Stipulation is in the public interest.

Specifically, we note that the terms of the Settlement Stipulation reflect standard contract terms that would apply if the FESAs were entered into today. The eight Idaho Wind contracts at issue were entered into prior to the Commission's adoption and implementation of a wind integration charge. The 90%/110% performance requirement contained in the contracts reflects an early method used to distinguish and appropriately value an intermittent resource. The 90%/110% performance requirement has since been replaced. New contracts account for the intermittency of wind through the use of an integration charge, wind forecasting fees and a mechanical availability guarantee. The Settlement Stipulation replaces a previously used methodology with the methodology currently used for valuing intermittent energy. As such, we find the settlement terms fair, just and reasonable. We further find that it is reasonable to approve the proposed effective date of January 1, 2014.

## ORDER

IT IS HEREBY ORDERED that the Joint Motion by Idaho Power and Idaho Wind Partners for Approval of the Settlement Stipulation is granted.

IT IS FURTHER ORDERED that the parties shall comply with all of the terms and conditions contained in the Settlement Stipulation.

IT IS FURTHER ORDERED that the amendments to the eight power purchase agreements be effective January 1, 2014.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

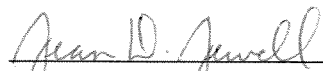
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 9<sup>th</sup> day of April 2014.

  
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PAUL KJELLANDER, PRESIDENT

  
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MACK A. REDFORD, COMMISSIONER

  
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MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

O:IPC-E-13-19\_ks