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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR COMMISSION ACCEPTANCE OR REJECTION OF AN ENERGY SALES AGREEMENT WITH BANNOCK COUNTY, IDAHO.	**CASE NO. IPC-E-13-24** **COMMENTS OF THE COMMISSION STAFF**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32963 on January 15, 2014, submits the following comments.

BACKGROUND

On December 5, 2013, Idaho Power Company filed an Application requesting Commission acceptance or rejection of an Energy Sales Agreement between the Company and Bannock County, Idaho. Under the Agreement, Bannock County would sell electric energy generated by the Bannock County Solid Waste Department Landfill Gas-to-Energy Project to the Company.

Bannock County proposes to operate a 3.2 megawatt (MW) landfill gas-to-energy plant located near Pocatello, Idaho. The County plans to initially install a 1.6 MW generation unit and may install another 1.6 MW generation unit within 60 months of the operation date of the

Agreement. The generating facility will be a qualifying facility under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Agreement provides for a 20-year term using non-levelized "other" published avoided cost rates currently established by the Commission in Order No. 32817 for energy deliveries of less than 10 aMW. The Agreement was signed by Bannock County on November 5, 2013, and was subsequently signed by Idaho Power on November 13, 2013. The scheduled operation date for the project is May 1, 2014.

On January 3, 2014, Idaho Power filed three replacement pages for the Agreement, along with a letter signed by the Bannock County Commissioners approving the replacement pages. The new pages replace Appendix E to the Agreement containing the non-levelized energy prices initially stated in the Agreement.

STAFF REVIEW

Nearly all of the terms and conditions contained in the Agreement are the same as those contained in other recent PURPA agreements. Consequently, Staff's comments will focus only on those parts of the Agreement that are new or different from other recently approved PURPA agreements. Those differences relate to use of the Mid-Columbia non-firm price index, requirements for posting a security deposit, and calculation of the proper avoided cost rates.

References to Mid-C Index Price

The Agreement contains multiple references to use of a Mid-Columbia Market Energy Price for purposes of pricing Surplus Energy and for calculating Delay Damages (*See* Delay Price, ¶ 1.8; Market Energy Reference Price, ¶ 1.22; Mid-Columbia Market Energy Cost definition, ¶ 1.26).[1] The Mid-Columbia Market Energy Cost, by definition in the Agreement, is based on "the volume weighted average of the daily on-peak and off-peak Platts Mid-Columbia Index activity for actual non-firm energy transactions as reported by Platts."

Earlier PURPA contracts utilized a Mid-C index for similar pricing, but specified Dow-Jones rather than Platts as the source for the index. Earlier contracts also stated only that the prices should be the "weighted average of the daily on-peak and off-peak activity for non-firm

[1] Surplus Energy is energy produced and delivered that is more than 110% or less than 90% of the forecasted energy delivery for the month. Because Surplus Energy is not planned, it is priced differently than planned Net Energy. Delay Damages can occur if a facility fails to meet its scheduled operation date and Idaho Power must acquire higher priced replacement energy from another source.

transaction," not the "volume weighted average." Dow-Jones has recently turned over publishing of the Mid-C index to Platts, a sister company, so a switch to some source other than Dow-Jones was necessary for this Agreement. Solely for purposes of this Agreement, Staff does not oppose use of the Platts Mid-C index, nor does Staff oppose the practice of volume weighting on-peak and off-peak pricing.

However, two currently open cases, Case No. IPC-E-13-25 and Case No. IPC-E-13-19, both involve questions about whether Platts is an appropriate index to use for pricing non-firm energy and whether or not the index prices should be volume weighted. In both cases, Staff intends to examine the Platts Mid-C index as well as several other candidate indices. Staff also intends to weigh in on whether volume weighting was contemplated in certain existing contracts and whether it should be applied to new contracts going forward. Comments in both cases will not be filed until after this case is resolved. Consequently, Staff does not wish for its recommendations in this case to be indicative of positions it may take in Case Nos. IPC-E-13-25 and IPC-E-13-19, nor to be an endorsement of the Platts index or the practice of volume weighting. Moreover, if the Commission chooses to approve use of the Platts index and volume weighting in this Agreement, Staff recommends that the Commission not consider its decisions in this case to set precedents for future decisions to be made in other cases.

Security Issues

The Bannock County project is proposed to be developed in two phases. The first phase is planned to consist of a single generation unit with a nameplate capacity of 1.6 MW. The scheduled operation date for the first phase is May 1, 2014. An identical second generation unit is also being contemplated that, if pursued, would be added within five years of the operation date of the first phase. As the Agreement is structured, the second 1.6 MW generation unit would be subject to the same rates and conditions as the first generation unit, but only for whatever term of the Agreement would remain. In other words, if the second unit were to be added five years into the 20-year contract, it effectively would only have a 15-year contract whereas the first unit would have a 20-year contract.

Under the terms of the Agreement, a security deposit must be posted in an amount equal to $45 per kW times the nameplate capacity of the initial generation unit ($45 x 1,600 kW = $72,000). No security deposit would be required for the second 1.6 MW unit should it be added in

the future. The primary purpose of the security deposit is to ensure that funds are available to cover any delay damages should they be incurred.

Staff inquired as to why the security deposit amount was based on the lesser 1.6 MW capacity rather than 3.2 MW. Idaho Power cited the following reasons:

1. Management of two online dates, one for each phase of the project, along with an associated security deposit for each, would be administratively complex. The problem would be compounded because of the uncertainty of whether the second unit would ever be added, how long security deposits would be retained, and under what conditions they would be refunded.
2. Incorporating the second potential phase of the project into the current contract effectively locks in today's rates. It is likely that if the second phase of the project were required to negotiate a new contract in the future, the rates in that contract would be higher. Therefore, it would most likely be better for Idaho Power and its ratepayers to incorporate both phases of the project into a single contract at today's rates.
3. Recognizing that the second phase of the project may not come online until five years after the first phase, by incorporating the second phase into the original contract, it will effectively have only a 15-year contract. Idaho Power believes that a shorter contract would be to the Company's advantage.
4. As a result of the outcome in Case No. GNR-E-11-03, delay and termination damages must now be based on actual damages, rather than on a predetermined liquidated damages amount. Consequently, if market prices remain relatively low for the next few years, it would be likely that any delay damages that might be incurred would be low or possibly zero; consequently, most of the delay security would be returned to Bannock County anyway. Stated differently, a delay by Bannock County in bringing the second phase of the project online might be in Idaho Power's favor if it could procure lower cost replacement power elsewhere, thus, no delay security would be necessary in that instance.

Staff believes that the reasons cited by Idaho Power have merit. If Idaho Power had insisted on requiring a higher security amount based on 3.2 MW rather than 1.6 MW, Bannock County could have simply chosen to negotiate a separate contract for the project's second phase, most likely at a higher rate and for a full 20-year term. The Agreement as written represents a compromise between the parties that Staff believes is fair and reasonable.

Rates

The rates contained in the contract are based on Order No. 32817 dated May 29, 2013. Rates from Order No. 32817 are the first to be specific to different resource types and also the first to be dependent on a utility's summer or winter capacity deficit position. In reviewing the rates included in the Agreement, Staff discovered that the rates for the year 2014 were incorrect. On January 3, 1014, Idaho Power submitted replacement contract pages along with a letter documenting concurrence by Bannock County of the revised rates.

Beginning with Order No. 32817, rates can also be dependent on the capacity of the project because of the extent to which the project's capacity is able to satisfy any resource deficiencies the utility may have. Therefore, rates for Bannock County, at least in the early years of the contract (i.e., Idaho Power's deficiency period), would be different for a nameplate capacity of 1.6 MW than for a capacity of 3.2 MW. In its computation of rates, Idaho Power assumed a capacity of 1.6 MW, the initial project capacity, because 1.6 MW would be the capacity during the years when the rates would be impacted. Staff agrees with Idaho Power that the rates should be based on an assumed capacity of 1.6 MW rather than 3.2 MW.

Staff has reviewed the revised rates and confirms that they are now correct and properly computed in compliance with Order No. 32817.

STAFF RECOMMENDATIONS

Staff recommends approval of the proposed Agreement between Idaho Power and Bannock County incorporating replacement pages 47, 48, and 49 submitted on January 3, 2014. Staff further recommends that all payments made for purchases of energy under the Agreement be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 5th day of February 2014.

Weldon B. Stutzman
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 5TH DAY OF FEBRUARY 2014, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF,** IN CASE NO. IPC-E-13-24, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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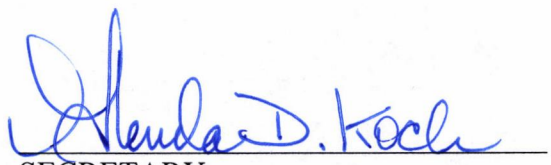

SECRETARY