

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION	)	
OF IDAHO POWER COMPANY FOR	)	CASE NO. IPC-E-14-06
APPROVAL OR REJECTION OF AN	)	
ENERGY SALES AGREEMENT WITH	)	
WILLIAM ARKOOSH FOR THE SALE	)	
AND PURCHASE OF ELECTRIC ENERGY	)	ORDER NO. 33103
FROM THE LITTLE WOOD RIVER	)	
<u>RANCH II PROJECT.</u>	)	

On April 30, 2014, Idaho Power Company filed an Application requesting that the Commission accept or reject an Agreement between Idaho Power and William Arkoosh for the sale and purchase of electric energy produced by the Little Wood River Ranch II Project (Project). On May 27, 2014, Idaho Power filed an Amendment to its Application that included a summary of terms and conditions contained in the proposed Agreement that are different from prior agreements approved by this Commission. The Commission issued a Notice of Application and Notice of Modified Procedure on June 11, 2014, setting comment and reply deadlines. Order No. 33055. Commission Staff, Idaho Power, and the Renewable Energy Coalition filed comments.

By this Order, we approve the Agreement between Idaho Power and William Arkoosh for the sale and purchase of electric energy generated by the Little Wood River Ranch II Project.

### THE APPLICATION

On April 23, 2014, Idaho Power and William Arkoosh entered into an Agreement pursuant to the terms and conditions of various Commission Orders applicable to PURPA agreements for non-seasonal hydro projects. Idaho Power states that Mr. Arkoosh proposes to operate and maintain a 1.28 megawatt (MW) non-seasonal hydro energy facility to be located near Shoshone, Idaho. The Company maintains that the Project will be a qualified facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act (PURPA).

Under the terms of the Agreement, Mr. Arkoosh elected to contract with Idaho Power for a 20-year term using the non-levelized published avoided cost rates as currently established by the Commission in Order No. 32817 for energy deliveries of less than 10 average MW (aMW). As defined in paragraphs 1.20 and 4.1.4 of the Agreement, Mr. Arkoosh will be

required to provide data on the facility that Idaho Power will use to confirm that under normal and/or average conditions, the facility will not exceed 10 aMW on a monthly basis. As described in paragraph 7.5 of the Agreement, should the facility exceed 10 aMW on a monthly basis, Idaho Power will accept the inadvertent energy that does not exceed the maximum capacity amount, but will not purchase or pay for inadvertent energy.

Mr. Arkoosh has selected June 1, 2015, as the Project's Scheduled Operation Date. Various requirements have been placed upon Mr. Arkoosh in order for Idaho Power to accept energy deliveries from this facility. Idaho Power will monitor compliance with these requirements. Idaho Power will continue to monitor the ongoing requirements throughout the term of the Agreement.

The Agreement provides that all applicable interconnection charges and monthly operational or maintenance charges under Schedule 72 will be assessed to Mr. Arkoosh. A Schedule 72 Generator Interconnection Agreement (GIA) between Mr. Arkoosh and Idaho Power was executed on July 29, 2013. Idaho Power states that PURPA QF generation must be designated as a network resource (DNR) to serve Idaho Power's retail load on its system. In order for the facility to maintain its DNR status and maintain compliance with Idaho Power's non-discriminatory administration of its Open Access Transmission Tariff (OATT) and FERC requirements there must be a power purchase agreement (PPA) associated with its transmission service request.

Article 21 of the Agreement provides that the PPA will not become effective until the Commission has approved all terms and conditions and declared that all payments Idaho Power makes to Mr. Arkoosh for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

Idaho Power filed an Amendment to its initial Application on May 27, 2014. The Amendment provides a summary of terms and conditions contained in the proposed Agreement that are different from prior agreements approved by this Commission. In its Amendment, Idaho Power explains that this Agreement is the first hydro-based agreement submitted for approval "that contains revised terms and conditions subsequent to the Commission's final and reconsideration orders from Case No. GNR-E-11-03. As such, the form of the [Agreement] has several terms and conditions that vary from previously approved agreements in order to comply with the Commission's recent orders." Amendment at 5.

Idaho Power and Mr. Arkoosh also agreed to changes in some standard provisions that the parties now propose for Commission approval. Idaho Power identifies the major changes as follows:

- Change to the definition of “Mid-Columbia Market Energy Cost” to replace reference to the Dow Jones index with reference to the Intercontinental Exchange (ICE) index and formula consistent with the proposed settlement in Case No. IPC-E-13-25<sup>1</sup>;
- Addition of definitions and provisions, paragraphs 1.29, 1.38, 1.39, 3.4 and 7.6 to incorporate definitions of “non-seasonal hydro facility” and “seasonal hydro facility” as well as “seasonal hydro facility test periods” to incorporate and maintain separate rates for seasonal and non-seasonal hydro projects and to ensure that seasonal hydro projects perform within the requirements of generating 55 percent of their annual generation in the months of June, July and August;
- Removal of the provisions providing for delay liquidated damages and maintained provisions to provide for delay security and actual delay damages as provided for by the Commission’s adoption of the partial stipulation in Commission Order No. 32697;
- Change to Article VIII, “Environmental Attributes,” to indicate that Mr. Arkoosh owns all Environmental Attributes or Renewable Energy Credits/Certificates;
- Change to paragraph 6.2 to allow Mr. Arkoosh to adjust the “Initial Year Monthly Net Energy Amounts” on a monthly, rather than quarterly, basis;
- Revision to paragraph 12.4 relating to Scheduled Maintenance; and

Idaho Power also made several other minor revisions in an attempt to add clarity.

## **COMMENTS AND REPLIES**

### ***Commission Staff Comments***

Because of the number of significant changes contained in this Agreement as compared to prior power purchase agreements approved by this Commission, Staff thoroughly reviewed the modified terms and conditions with regard to their overall impact on Idaho Power’s system and the utility’s customers. Generally, Staff found the changes to be consistent with prior

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<sup>1</sup> This change is relevant to the 90/110 performance requirement.

Commission Orders and directives. However, Staff took exception to ¶ 6.2.3 of the Agreement regarding monthly, rather than quarterly, revisions to energy generation estimates.

Staff considered the history of the 90/110 performance band in its analysis of whether it was prudent to move to monthly generation estimates. Staff explained that, in Case No. IPC-E-04-08/10, Idaho Power proposed a performance band to firm up QF power and make it more predictable and reliable. At that time, the Company contended that by providing economic incentives for QF developers to more accurately estimate the amount of firm energy it would deliver each month, the Company hoped to encourage developers to deliver firm rather than non-firm energy. Obtaining better estimates of the monthly amounts of firm energy to be provided, Idaho Power contended, would increase the Company's ability to predict when QF generation would be available and would improve the Company's ability to integrate QF resources into its resource planning and acquisition processes as firm resources. Based on the record developed in that case, the Commission adopted provisions for a 90/110 percent performance band in order for QFs to be entitled to firm energy rates.<sup>2</sup> Order No. 29632. Under the 90/110 provisions, QFs must provide monthly generation estimates that, after the first year, can only be revised every three months. Moreover, QFs are not allowed to revise their generation estimates in the immediate three months of the forecast period.

The Company reasoned that the change in revised generation estimates benefits the utility and the project by allowing more clarity and flexibility to the Project in adjusting its estimated energy deliveries and maintaining stability in the energy estimates necessary for Idaho Power's planning and operation. However, because Staff believes that the new terms regarding generation estimates fail to comply with the Commission's prior Order, Staff recommended that the proposed Agreement be rejected by the Commission. Staff suggested that any consideration to change the 90/110 forecasting requirement with a monthly generation estimate should occur in a docket that allows all three utilities and any other interested persons or parties to participate.

### ***Renewable Energy Coalition Comments***

The Coalition maintained that deviations from the original 90/110 provisions have been supported by Staff and approved by the Commission in prior proceedings. Additionally,

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<sup>2</sup> Under the adopted provisions, monthly QF deliveries of energy in excess of 110 percent of scheduled "net energy" receive only 85 percent of the market price, or the contract rate, whichever is less. If the QF delivers less than 90 percent of the scheduled "net energy" amount, existing contracts provide for liquidated damages to compensate the utility and its customers for having to acquire energy to make up the shortfall.

REC argued that, because the terms of the agreement between Idaho Power and William Arkoosh were negotiated and agreed to by the contracting parties, the Commission should approve the Agreement. REC further urged the Commission “to recognize the acceptability for broader and/or future application” of the monthly generation estimate provision. REC Comments at 2. The Coalition maintained that independent analysis supports the proposition that monthly generation estimates will produce more favorable and reliable revenue for projects and more reliable energy deliveries for Idaho Power. For these reasons, the Coalition supports approval of the Agreement.

***Commission Staff Reply***

Staff took exception to the comments filed by Renewable Energy Coalition. Staff believed that REC’s comments were misleading. Staff argued that deviation from the 90/110 provisions in another agreement do not justify deviation in this case. Staff further noted that, although the Coalition cited an independent analysis that had been performed revealing the impact of 90/110 provisions on a project’s revenue, REC failed to provide the analysis in support of its argument. Staff maintained that the Coalition’s interest and involvement in this case supports Staff’s recommendation to open a case including any and all interested parties.

***Renewable Energy Coalition Reply***

The Coalition filed a reply in order to address Staff’s characterization that its comments were misleading. REC asserted that it did not intend to mislead. REC stated that its organization has a broad membership across several states and that any comments made in regard to 90/110 provisions should be viewed as an expression of general interest and concern on behalf of the Coalition’s multi-state membership – not simply advocacy for approval of a few contracts in Idaho. The Coalition reiterated that results of an independent analysis show potential revenue loss when the traditional 90/110 provisions are utilized. However, REC stated that such an analysis has not been performed specific to the Arkoosh Agreement.

***Idaho Power Company Reply***

Idaho Power filed reply comments on July 18, 2014. The Company stated that it believed the contractual change to monthly, rather than quarterly, generation estimates was “a relatively straightforward and non-controversial revision that maintains the integrity of the existing 90/110 performance and firmness requirements, but clarified a complicated and confusing contractual provision that talks about yearly, monthly, quarterly, and nine month time

periods.” Reply at 7. Idaho Power further reasoned that “[f]rom the Company’s perspective, the purpose of the 90/110 provisions, and the consequent direction about revision to the estimated Net Energy Amounts used for the 90/110 requirement, is not to implement some kind of punitive pricing policy, but, rather, to get an accurate estimate and forecast of QF generation to assist in the real-time planning and operation of Idaho Power’s system for the benefit of its customers in a least cost manner.” *Id.* at 8.

The Company maintained that monthly generation estimates are consistent with the Commission’s prior Orders regarding 90/110 provisions because “the interest of the Company in planning for QF resources is better served if the generation forecast is a reliable estimate.” Order No. 29632 at 23. Idaho Power argued that monthly estimates are much more beneficial in meeting the Company’s short-term, operational planning needs for integrating QF generation. Idaho Power explained that the purpose of the performance criteria is to allow the project to provide Idaho Power with an accurate energy estimate that can be used in both long and short-term planning by the utility – not to increase or reduce the energy payments made to a project.

Idaho Power does not believe that a separate, larger proceeding is required to consider a change to the contract provisions for adjusting generation estimates. The Company requests that the Commission approve the Agreement without change or condition and declare that payments for purchases of energy between Idaho Power and William Arkoosh be allowed as prudently incurred expenses for ratemaking purposes.

### **FINDINGS AND CONCLUSIONS**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power, 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.

The Commission has reviewed the record in this case, including the April 23, 2014, Agreement, comments and replies of Commission Staff, Idaho Power and Renewable Energy Coalition. We find that the proposed Agreement submitted in this case contains acceptable contract provisions including the current, non-levelized published avoided cost rates approved by

the Commission in Order No. 32817 for energy deliveries of less than 10 average MW (aMW). We further find that the terms and definitions regarding Mid-Columbia Market Energy Cost, seasonal and non-seasonal hydro rates, delay security and damages, ownership of renewable energy credits, and generation estimates for purposes of the 90/110 provision are consistent with prior Commission orders.

Specifically, we find that monthly, as opposed to quarterly, reporting of energy generation estimates is a reasonably negotiated term between the parties and not inconsistent with the Commission's guidance and findings in Order No. 29632. As we stated in that Order, "it is reasonable and operationally expedient to require QFs to provide Idaho Power with monthly kWh production estimates. . . . The Commission finds it reasonable to provide more frequent opportunities to revise generation estimates than [the two years] proposed by the Company. We find that the interest of the Company in planning for QF resources is better served if the generation forecast is a reliable estimate." Order No. 29632 at 23. The Commission did not approve the 90/110 provisions in order to implement a punitive pricing mechanism. The intent of a QF providing generation estimates has always been to assist the utility in forecasting and operational planning so that the utility can provide the most reliable service possible to its customers. We find that a provision allowing for monthly generation estimate updates is consistent with that purpose.

We acknowledge Staff's concerns that monthly generation estimates would likely allow more energy production to fall within the 90/110 band. However, no evidence was presented that this result is unreasonable or would work to the detriment of Idaho Power's ratepayers. Moreover, Staff ultimately agreed that "much of the justification provided by Idaho Power" in defense of utilizing monthly generation estimates has merit. Staff Comments at 7. Consequently, based on our review of the evidence presented, we find that the use of monthly generation estimates is just and reasonable. We encourage Idaho Power to be mindful of the effects that this change may have on both its operations and its ratepayers. We expect that the Company will weigh the benefits and detriments of monthly generation estimates as projects with these provisions come on line.

Based on the foregoing, we find that the Agreement as a whole is just, reasonable and in the public interest. Therefore, we approve the Agreement between Idaho Power and William

Arkoosh without material change or condition. We further find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

### ORDER

IT IS HEREBY ORDERED that the Energy Sales Agreement between Idaho Power and William Arkoosh for the Little Wood River Ranch II Project is approved without change or condition.

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 21<sup>st</sup> day of August 2014.



PAUL KJELLANDER, PRESIDENT

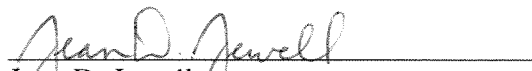


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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