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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kristine A. Sasser, Deputy Attorney General, and in response to the Notice of Application and Notice Modified Procedure issued in Order No. 33055 on June 11, 2014, in Case No. IPC-E-14-06, submits the following comments.

BACKGROUND

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 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). 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 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.

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 the Commission.

STAFF ANALYSIS

In its Amendment to its initial Application, 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. In addition, Idaho Power and the Seller have agreed to changes in some provisions that the parties propose for Commission approval. Discussed below are each of the significant differences between provisions in this Agreement and previous PURPA contracts for hydro projects.

Revised Provisions for Entitlement to Firm Energy Rates

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. The Company contended that by providing economic incentives for QF developers to more accurately estimate the amount of firm energy it will 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, will increase the Company's ability to predict when QF generation will be available and will improve the Company's ability to integrate QF resources into its resource planning and acquisition processes as firm resources. By including the firming provisions in the QF contracts, the Company stated that it is attempting to more closely align the firmness of the energy purchases under the QF contracts with firm energy purchases it makes every day in the wholesale market.

To address Idaho Power's concerns, in Order No. 2963 the Commission adopted provisions for a 90/110 percent performance band in order for QFs to be entitled to firm energy rates. 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. 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. Table 1 below graphically illustrates how monthly generation estimates may be revised based on Order No. 29632.

Table 1. Opportunities to Make an Estimate Revision According to Order No. 29632

Month	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	...
1 st opportunity at the end of month 3 allows revision for July, Aug, and Sep																						
2 nd opportunity at the end of month 6 allows revision for Oct, Nov, and Dec																						
3 rd opportunity at the end of month 9 allows revision for Jan, Feb, and March																						
...																						

However, in this Energy Sales Agreement at ¶ 6.2.3, Idaho Power proposes to adopt a monthly, rather than quarterly timeframe for making revisions to generation estimates. Table 2 below, reproduced from the Agreement, illustrates the proposed schedule for revisions. In proposing the change, Idaho Power states that the Seller gains more clarity and flexibility in adjusting its estimated energy deliveries and Idaho Power maintains the stability in the estimates necessary for its planning and operation. Idaho Power admits that this change deviates from Order No. 29632, but both the Company and the Seller propose Commission adoption of the change.¹

Table 2. New Method to Make Estimate Revisions Proposed by Idaho Power and Little Wood River Ranch II Project

Notification Month	Future Monthly Net Energy Amounts Eligible to Be Revised
November	January and any future months
December	February and any future months
January	March and any future months
February	April and any future months
March	May and any future months
April	June and any future months
May	July and any future months
June	August and any future months
July	September and any future months
August	October and any future months
September	November and any future months
October	December and any future months

In order to compare the two methods effectively, Staff created Table 3 to visually illustrate the new timeframes mentioned above. As can be seen, one major difference is the time lapse between the point when revision is made and the point when the estimates begin. Order No. 29632 requires a three-month gap, whereas the new method proposes a one-month gap. For example, the estimate for the month of April and later can be revised at the end of December under Order No. 29632; the estimate for the month of April and later can be revised at the end of February under the new method.

¹ In its Application, Idaho Power stated that “with the proposed change, the Seller must still provide 12 months of estimated Net Energy Amounts, and still cannot revise the immediate three months of estimated Net Energy Amounts.” However, in response to Staff production requests, Idaho Power admitted that this statement was incorrect and that the Agreement does, in fact, permit monthly revisions to estimated energy generation amounts.

Table 3. Opportunities to Make an Estimate Revision as Proposed by Idaho Power and Little Wood River Ranch II

Month	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	...
Notification made in Nov allows revision for Jan and any future months																						
Notification made in Dec allows revision for Feb and any future months																						
Notification made in Jan allows revision for March and any future months																						
...																						

In the Amended Application (*See* p.6), Idaho Power admits that the new method allows revision to occur “on a monthly, rather than quarterly, basis” and that the change is “contrary to” and “varies from” Order No. 29632. Because this new timeframe fails to comply with the Order, Staff recommends that the proposed Agreement be rejected by the Commission.

Besides not complying with a prior Commission order, Staff opposes approval of a change to the 90/110 requirements in this case for the following additional reasons:

1. There are already approximately 17 existing non-wind contracts that comply with Order No. 29632. These projects can only revise their generation estimates three months ahead of time. If the Commission approves a change in requirements for this Agreement, Staff would expect existing contracts to seek similar treatment or amendments.
2. The change of the timeframe is inconsistent with the reasoning of prior positions taken by Idaho Power and Staff in cases IPC-E-04-08 and IPC-E-04-10 in 2004. Back then, Idaho Power proposed to allow QFs to revise their energy estimates three times during the first year of operation and every two years thereafter, because a two-year interval allows the Company to more easily integrate the QF resource into its biennial IRP planning process. Staff, on the other hand, recommended a six-month interval for the duration of the contract. The Commission adopted a three month interval stating, “The Commission finds it reasonable to provide more frequent opportunities to revise generation estimates than 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.” (*See* Order No. 29632).

3. Currently, as a standard to distinguish firm vs. non-firm, the 90/110 requirements are only utilized in non-wind projects, although wind projects with the 90/110 band do exist. For all practical purposes it applies mostly to hydro projects because there are so few other types of facilities (e.g., solar, biomass, cogeneration, landfill gas). Changing to monthly generation estimates would likely accommodate nearly all seasonal variations in hydro production, significantly diminishing the purpose of the 90/110 requirement.
4. Staff believes there must continue to be some method to distinguish firm from non-firm energy for specific resources based on their operating characteristics. Integration charges have been adopted as a reasonable substitute to the 90/110 requirements for wind projects, and are now also being proposed for solar projects. Staff does not consider a monthly forecast revision schedule to be a reasonable substitute for a quarterly forecast revision schedule; instead, it is simply a much less rigorous requirement.
5. Idaho Power's planning for generation from its own hydro facilities is still done on a quarterly or seasonal basis. Without a well-reasoned explanation of why monthly revisions are more beneficial for the project, the utility and the utility's ratepayers, it seems reasonable to apply the same planning standards to non-utility hydro facilities.
6. Any change in the existing 90/110 forecasting requirements should apply to all three utilities. All interested persons and parties should have an opportunity to weigh in so the Commission can make a decision based on a fully developed record. In addition, any changes should apply not only to hydro, but also other resource types such as geothermal, cogeneration, biomass, and landfill gas. Therefore, a generic case under a separate docket may be a more appropriate procedure so that all utilities and interested parties could participate.
7. Although the hydro facility in this contract might be too small to cause critical planning issues, several other contracts containing the same forecasting requirements were filed with the Commission concurrently with this matter. Because larger hydro facilities or other projects may have greater effects on the planning process if monthly forecasting is approved, Staff does not believe the Commission should consider this forecasting change on a case-by-case basis.

While not stated in its Application, the Company attempts to justify the forecasting requirement by stating in production request responses that the three-month notification process has caused significant confusion with QFs and that, even though Idaho Power has worked with each project individually, the issue still persists. Idaho Power also states that by allowing the Seller to revise the net energy estimates on a more frequent basis, there is a greater chance that these estimates will be more reliable values that will be more useful in the Company's short-term planning process. Idaho Power further states that it does not believe that a change to a 30-day notification period will have a significant impact on the 12 months of estimated generation data or on its long-term planning process.

Staff agrees that much of the justification provided by Idaho Power in response to Staff production requests has merit. Nonetheless, Staff believes that a change to the notification requirements associated with the 90/110 rules is more properly addressed in a separate proceeding that includes all of the potential stakeholders.

Change to the Definition of Mid-Columbia Market Energy Cost

The definition of "Mid-Columbia Market Energy Cost" has been changed to replace the reference to the Dow Jones index with reference to the Intercontinental Exchange (ICE) index and formula. This change is consistent with Order No. 33053 issued on June 10, 2014 in Case No. IPC-E-13-25².

Incorporation of Seasonal and Non-Seasonal Hydro Definitions and Rates

The Agreement includes the addition of 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. These additions are consistent with Order Nos. 32697 and 32802 in Case No. GNR-E-11-03.

² This change is relevant to the 90/110 performance requirement.

Under the terms of the Agreement, William 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 aMW. Staff has reviewed the rates contained in the Agreement and agrees that they are correct. The Agreement assumes that the project will qualify for “seasonal” rates, but includes “non-seasonal” rates as well in the event the project cannot meet the requirements of a seasonal hydro project.

Removal of Provisions for Delay Liquidated Damages

Provisions providing for delay liquidated damages have been removed because of the Commission’s adoption of the partial stipulation in Commission Order No. 32697. The stipulation required that delay damages be based on the difference between market rates at the time the QF fails to achieve its scheduled operation date and the avoided cost rates contained in the contract, rather than being based on a predetermined amount of liquidated damages specified at the time of contract signature. Similarly, termination damages are to be based on actual damages, rather than on a predetermined amount. The Agreement maintains provisions to provide for delay security, however, so that funds will be available to pay Idaho Power in the event delay or termination damages are actually incurred.

Revised Provisions for Ownership of Renewable Energy Credits

The Agreement incorporates changes to Article VIII, “Environmental Attributes,” to indicate that Mr. Arkoosh owns all Environmental Attributes or Renewable Energy Credits/Certificates. This is consistent with Commission decisions in Case No. GNR-E-11-03 Order No. 32697 (December 18, 2012), and Order No. 32802 (Order on Reconsideration; May 6, 2013). Those orders require that RECs for SAR based projects will be owned by the QF, and RECs produced by projects utilizing the IRP methodology will be equally apportioned between the utilities and the QF absent an alternative agreement by the parties.

Other Minor Revisions

The parties have revised ¶12.4 relating to Scheduled Maintenance to give the Seller the option to claim maintenance will be scheduled at the same time each year with one notification, in order to eliminate the requirement of sending multiple notifications for maintenance that is scheduled for the same time every year. Several other minor revisions have been made to the


Agreement in an attempt to add clarity. Staff believes all of the minor revisions are reasonable and appropriate.

RECOMMENDATIONS

Staff recommends that the proposed Agreement be rejected because it fails to comply with the requirements of Order No. 29632. Staff does not believe that Idaho Power provided adequate justification to carve out an exception to a prior Commission order. However, Staff believes that a separate proceeding, in which all utilities and interested parties can actively participate, would provide a good opportunity to discuss the benefits and detriments of Idaho Power's proposed modifications to the existing generation estimate requirements.

However, if the parties to the Agreement wish to revise its 90/110 requirements so as to be consistent with Order No. 29632, Staff believes all other proposed changes from prior hydro contracts are acceptable.

Respectfully submitted this 11TH day of July 2014.


Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling
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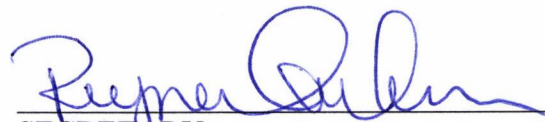
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 11th DAY OF JULY 2014, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-14-06, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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