

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR) CASE NO. IPC-E-14-24
APPROVAL AND IMPLEMENTATION OF)
SCHEDULE 73, COGENERATION AND)
SMALL POWER PRODUCTION.) ORDER NO. 33197
)

In Case No. GNR-E-11-03, Order No. 32697, the Commission directed parties to participate in workshops to “begin to form a structure for fair and reasonable contracting procedures and rules.” Order No. 32697 at 48. Idaho Power and other interested parties met on several occasions and discussed procedures that would be beneficial to both utilities and qualifying facility (QF) developers in the negotiation and execution of Public Utility Regulatory Policies Act (PURPA) power purchase agreements (PPAs). Ultimately, in that docket, no procedures were agreed upon and/or finalized.

On March 27, 2014, Avista Corporation filed proposed tariff revisions with the Commission in order to incorporate PURPA contracting procedures and timelines into its existing Cogeneration and Small Power Production Schedule. On May 30, 2014, with some modifications, the Commission approved Avista’s proposed tariff (Schedule 62). The Commission also encouraged “the remaining utilities to consider progress made through the workshops and contemplate submission of a similar tariff that might eliminate or reduce the uncertainty that is somewhat inherent in negotiations between utilities and QFs.” Order No. 33048 at 5.

Idaho Power responded to the Commission’s suggestion on August 29, 2014, by filing an Application requesting that the Commission approve its proposed tariff Schedule 73, Cogeneration and Small Power Production Schedule – Idaho.

By this Order, we approve Idaho Power’s Schedule 73 with the modifications more fully described herein.

THE APPLICATION

Idaho Power’s proposed tariff will apply to all PURPA QFs that intend to connect to its system within the State of Idaho. Idaho Power’s proposed Schedule 73 was drafted to closely match Avista’s approved Schedule 62, and the majority of Schedule 73 is identical to Avista’s

Schedule 62, including the identified contracting procedure “steps” and the time period set forth for response/action in each step. Idaho Power states that several changes were made to reflect differences between Idaho and Avista, but for all intents and purposes, the schedules are essentially the same.

Idaho Power’s proposed tariff sets forth general information to be provided to the Company by a QF in Section 1.a under “Contracting Procedures.” Within 20 days of the receipt of such information, Idaho Power will provide a QF with an indicative pricing proposal for the QF. Such pricing is not final or binding on either party and is intended to provide indicative pricing early in the process to enable the QF developer to make preliminary determinations regarding its proposed project.

Schedule 73, Section 1.d sets forth that the prices and other terms and conditions in the agreement are only final and binding upon full execution by the parties and approval by the Commission – or pursuant to a legally enforceable obligation determination by the Commission. This includes the Commission’s determination requiring the QF to deliver its electrical output within 365 days of a determination of a legally enforceable obligation. *Citing* Order No. 33048.

If a QF desires to proceed after receiving indicative pricing, the QF may request a draft energy sales agreement (ESA). Section 1.e sets forth the information the Company will need for the preparation of the draft ESA. Fifteen days after receipt of all information, the Company will provide the QF with a draft ESA. Within 90 days of receipt of the draft ESA, a QF will notify Idaho Power whether it accepts the terms and conditions and is ready to execute an ESA or that it has comments and proposed changes to the draft ESA. If a QF seeks to provide comments or changes, Section 1.j sets forth guidelines to be used during such negotiations.

When both parties are satisfied with the draft ESA and the QF provides Idaho Power with evidence that interconnection will occur prior to the requested first energy date, Idaho Power shall provide the QF with a final, executable version of the ESA within 10 business days. The QF shall then have 10 business days to execute and return the final ESA to the Company. If the QF fails to meet the timelines in the proposed tariff, the procedures shall begin anew. *Citing* Section 1.n.

COMMENTS

Commission Staff

Staff observed that Avista's approved Schedule 62 and Idaho Power's proposed Schedule 73 are essentially the same. Staff concluded that minor differences between the two schedules were either not material or were appropriate in order to tailor the content to Idaho Power's particular needs. Staff maintained that Idaho Power's proposed Schedule 73 lays out a fair process with reasonable timelines to guide the negotiation of PURPA contracts. Consequently, Staff recommended approval of Schedule 73 as proposed.

J.R. Simplot Company

J.R. Simplot Company stated that it is the owner of two qualifying facility (QF) projects in Idaho and that its operations contain significant potential for additional QF development. Thus, Simplot asserted that its Company is directly impacted by the outcome of these proceedings. Simplot agreed that it would be in the public interest to develop fair and reasonable contracting procedures and rules but offered "a limited number of improvements" to Idaho Power's proposed tariff. Simplot Comments at 2.

First, Simplot maintained that Idaho Power has proposed a new set of criteria for how a QF may create a legally enforceable obligation that, if approved, would constitute a major policy change in the Commission's implementation of PURPA. Simplot argued that, in the absence of a fully executed contract, a requirement for the QF to prove not only that it obligated itself to sell to the utility but also that the QF could begin delivering power within 365 days would frustrate QF development. Simplot recommended that this requirement be deleted. In the alternative, Simplot suggested that a QF's ability to deliver power within 365 days demonstrate one way – but not the only way – to create a non-contractual legally enforceable obligation.

Next, Simplot recommended revision of Idaho Power's proposed language requiring completion of interconnection studies in order for a QF to obtain a final, executable contract. Simplot argued that this language would impose a new requirement on QFs. Simplot further asserted that this requirement is unnecessary because the utility and its customers' interests are protected by liquidated damage and termination damage provisions contained in the contracts between the utility and the QF. "While Simplot generally agrees that a responsible developer will have obtained interconnection studies to the point where it is confident it can achieve its on-line date, imposing this as a requirement to receive a contract will be an unnecessary hurdle in

many circumstances.” *Id.* at 5. Simplot further states that the language is ambiguous and would likely lead to disputes about a QF’s progress through the interconnection process. Therefore, Simplot recommended deletion of this requirement or, as a compromise position, inclusion of a requirement that the QF has obtained only a feasibility study.

Idaho Power Reply

Idaho Power reiterated on reply that its tariff was developed to closely match Avista’s Schedule 62, which has already been approved by the Commission. Idaho Power maintained that Simplot’s objections to the proposed Schedule 73 are without merit. The Company stated that Simplot’s objections are virtually identical to objections raised by commenters against Avista’s proposed tariff. Idaho Power argued that “these objections were all ready [sic] considered, and rejected, by the Commission in its consideration and approval of Avista’s Schedule 62. . . . Consequently, these objections have all ready [sic] been appropriately addressed and resolved by the Commission.” Idaho Power Reply at 2.

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 is also empowered to resolve complaints between QFs and utilities and approve QF contracts.

The Commission has reviewed the record, Idaho Power’s Application, and the comments of Idaho Power, Simplot and Staff. We appreciate Idaho Power’s responsiveness to the encouragement that we provided upon approval of Avista’s similar tariff. We expect these tariffs will provide more certainty in a process that, in the past, has proven to be frustrating for both the utility and the QF.

Simplot is concerned that, in the absence of a fully executed contract, requiring a QF to begin delivering power within 365 days adds new criteria to a determination of whether a legally enforceable obligation has been created. Simplot’s argument is without merit and has already been directly addressed by this Commission.

The determination of a legally enforceable obligation is a separate and distinct ruling to be made by this Commission. The intent of creating rules and timelines to guide the negotiations process for PURPA projects, as discussed in great depth through the workshops, is to create more certainty for both parties, to ensure that both parties are bargaining in good faith, and to prevent avoided cost rates from becoming stale. PURPA, FERC regulations, and this Commission's precedent require that the avoided cost rates paid to a QF are an accurate reflection of the costs that the utility avoids by purchasing the QF energy. Stale rates are not an accurate reflection of the utility's true avoided costs.

Order No. 33048 at 5-6. Avoided cost rates are updated annually. Allowing 365 days before rates are deemed stale strikes a balance between the QF's desire for certainty in the rate and the utility's (and ultimately ratepayers') interest in paying an accurate avoided cost. We find that allowing a QF 365 days to deliver its electrical output from a determination that a legally enforceable obligation has arisen is just and reasonable and consistent with PURPA's mandate that the QF receive the costs that the utility otherwise avoids by purchasing the QF power.

Simplot also recommended that Idaho Power's proposed language requiring the completion of interconnection studies be removed. Simplot observed that, although Avista included similar language in its tariff as originally proposed, Avista removed the language after it was disputed by intervenors in the case. Ultimately, this Commission approved Avista's Schedule 62 without an explicit requirement that interconnection studies be completed.

We agree with Simplot that a responsible developer will be sufficiently through the interconnection process to be able to achieve the on-line date stated in its energy sales agreement. We find that including a requirement that interconnection studies be complete unnecessarily complicates what is intended to be a tariff governing the negotiation of energy sales agreements. To the extent that a developer acts hastily in attempting to get a project on-line and fails to complete the interconnection process, the developer is held accountable through liquidated and/or termination damages pursuant to the terms of the energy sales agreement. We find it just and reasonable for "Contracting Procedures," Section 1.k to read as follows:

When both parties are in full agreement as to all terms and conditions of the draft ESA, including the price paid for delivered energy, and the Customer provides evidence that any applicable Transmission Agreements have been executed and/or execution is imminent, the Company shall prepare and forward to the Customer, within 10 business days, a final, executable version of the ESA.

We further find it reasonable for Idaho Power's Schedule 73 to become effective on January 1, 2015.

ORDER

IT IS HEREBY ORDERED that Idaho Power's Schedule 73 be approved, with the modifications more fully described herein.

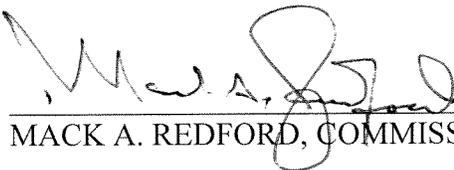
IT IS FURTHER ORDERED that the approved changes be effective January 1, 2015. The Company shall file a conforming tariff within seven (7) days upon issuance of this Order.

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 29th day of December 2014.



PAUL KJELLANDER, PRESIDENT

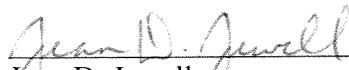


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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