

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION )**  
**OF IDAHO POWER COMPANY FOR ) CASE NO. IPC-E-14-30**  
**APPROVAL OR REJECTION OF AN )**  
**ENERGY SALES AGREEMENT WITH )**  
**CLARK SOLAR 3, LLC FOR THE SALE ) ORDER NO. 33204**  
**AND PURCHASE OF ELECTRIC ENERGY. )**  
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On October 17, 2014, Idaho Power Company filed an Application with the Commission requesting acceptance or rejection of a 20-year Energy Sales Agreement (Agreement) between Idaho Power and Clark Solar 3, LLC (Facility, Project). The Application states that Clark Solar 3 would sell and Idaho Power would purchase electric energy generated by the Project's solar photovoltaic facility located in Elmore County, Idaho. On November 6, 2014, the Commission issued a Notice of Application and Notice of Modified Procedure setting a comment deadline of December 19, 2014, and a reply deadline of December 26, 2014. Order No. 33166.

On December 19, 2014, Commission Staff and Intermountain Energy Partners (IEP) (on behalf of the contracting projects) filed comments. Idaho Power filed reply comments on December 23, 2014. On December 24, 2014, Intermountain Energy Partners filed a Motion requesting permission to file sur-reply in response to Idaho Power's reply comments. On December 31, 2014, the Commission granted IEP's Motion. Order No. 33203. Intermountain Energy Partners filed sur-reply comments on January 5, 2015.

By this Order, we approve the Agreement between Idaho Power and Clark Solar 3 with rates as reflected in Replacement Appendix E, filed by Idaho Power with its initial comments.

### THE APPLICATION

The Application states that the proposed Project expects to use mono crystalline solar modules with Tier 1 inverters and utilize a single axis tracking system for its 29.98 megawatt (MW) solar project. Application at 3. The Facility will be a QF under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Agreement is for a term of 20 years and contains incremental, integrated resource planning (IRP) avoided cost rates

applicable to solar projects that exceed 100 kilowatts (kW). Idaho Power states that prices were determined on an incremental basis with the inclusion of this Project in its queued position of proposed projects on Idaho Power's system. Over the 20-year term of the Agreement, the monthly rates vary from approximately \$34/megawatt-hour (MWh) for light load hours in early months of the Agreement to as high as \$111/MWh for heavy load hours in the latter years of the Agreement. The equivalent 20-year levelized avoided cost rate is approximately \$61.23/MWh.

The Agreement also contains negotiated solar integration charges as directed by the Commission in Order No. 33043. Solar integration starts at a charge of \$3.65/MWh for the first year of the Agreement (2017) and escalates to \$6.40/MWh in 2036. The equivalent 20-year levelized solar integration charge is approximately \$4.60/MWh. The 20-year estimated contractual obligation based upon the estimated generation levels applied to the avoided cost rates and solar integration charges is approximately \$103,602,890.

The Project has selected December 31, 2016, as its Scheduled Operation Date. *Id.* at 4. Idaho Power asserts that various requirements have been placed upon the Facility in order for Idaho Power to accept the Project's energy deliveries. Idaho Power states that it will monitor the Facility's compliance with initial and ongoing requirements through the term of the Agreement.

Idaho Power explains that the Agreement contains several terms and conditions that vary from previously approved agreements in order to comply with the Commission's recent Orders and in order to properly implement the negotiated rates and integration charges. In addition, Idaho Power and Clark Solar 3 have agreed to changes in some provisions that the parties propose for Commission approval. All terms and conditions have been negotiated and agreed to by the parties, with the exception of when Idaho Power begins to experience a capacity deficiency. With respect to when capacity payments will begin, the parties agreed to submit two alternative pricing schedules and have further agreed to accept and abide by the Commission's determination as to the appropriate pricing schedule for this Agreement. Idaho Power supports the pricing in Appendix E. Clark Solar 3 supports the pricing in Appendix F.

The Agreement contains provisions for a 90/110 firmness requirement, solar integration charge and pricing adjustment. Idaho Power states that the 90/110 requirement addresses the Commission's definition of firmness for entitlement to avoided cost rates determined at the time of contracting for the duration of the contract. The solar integration charge addresses the increased system operation costs (holding reserves, upward and downward

regulation) because of the variable and intermittent nature of the generation. The parties further negotiated and agreed to provisions that provide for a new type of price adjustment that is uniquely applicable to contracts that utilize the incremental IRP pricing methodology. The purpose of this price adjustment mechanism is to ensure that the Project performs in conformance with the generation profile that the Project submits, which forms the basis for the avoided cost pricing that is contained in the Agreement and locked in for the 20-year term. If the Project does not perform in conformance with the generation profile as submitted, then a corresponding adjustment is made to the price paid for that month of generation. The Agreement allows for a 2% deviation in the monthly Adjusted Estimated Net Energy Amount from the generation profile estimates before a price adjustment is applied. Consistent and material deviations from the hourly energy estimates in the generation profile will be considered a material breach of the Agreement.

New provisions providing for actual delay damages as opposed to liquidated damages are included in the Agreement, consistent with Order No. 32697. The parties negotiated a 50/50 split of environment attributes (aka renewable energy credits). As with all PURPA QF generation, the Project must be designated as a network resource (DNR) to serve Idaho Power's retail load on its system. Consequently, the Agreement contains provisions requiring completion of a Generator Interconnection Agreement (GIA), compliance with GIA requirements, and designation as an Idaho Power network resource as conditions of Idaho Power accepting delivery of energy and paying for the same under the Agreement. In order for the Project to maintain its DNR status, there must be a power purchase agreement associated with its transmission service request that maintains compliance with Idaho Power's non-discriminatory administration of its Open Access Transmission Tariff (OATT) and maintains compliance with FERC requirements.

By its own terms, the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declares that all payments made by Idaho Power to Clark Solar 3 for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreement ¶ 21.1.

## **COMMENTS**

### ***Initial Comments of Idaho Power***

On November 20, 2014, Idaho Power filed initial comments with revised avoided cost rates (Replacement Appendix E) based on modifications recommended by Commission Staff in

Case Nos. IPC-E-14-19 (Grand View Solar) and IPC-E-14-20 (Boise City Solar). Grand View Solar and Boise City Solar represent the first two PURPA solar contracts to be considered by the Commission with rates calculated consistent with recent changes to the incremental cost IRP methodology. Staff recommended adjustments of IRP methodology variables related to assumptions about fuel forecast and assumptions about displaceable resources. Idaho Power, Grand View Solar and Boise City Solar accepted Staff's recommended adjustments and the agreements – with Replacement Appendix E – were subsequently approved by the Commission. *See* Order Nos. 33179 and 33180.

Clark Solar 3 requested that Idaho Power re-run the pricing contained in its Agreement to incorporate Staff's recommended, and now Commission-approved, adjustments from the Grand View Solar and Boise City Solar cases. At the time Idaho Power filed the revised rates (Replacement Appendix E) with the Commission, Clark Solar 3 had not yet indicated whether it agreed to the rates contained in Replacement Appendix E. Idaho Power did not file a Replacement Appendix F.

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

Staff reviewed the purchase prices contained in Replacement Appendix E.<sup>1</sup> Staff asserted that the energy component of the rates – as reflected in the Replacement appendix – is fair, reasonable, and properly calculated. Staff maintained that the capacity component of the rates should be computed consistent with the pricing in Appendix E. Staff supported use of a July 2021 first capacity deficit because it accurately reflects Idaho Power's resource/deficit position. Selection and use of this capacity deficiency assumption is also consistent with the Commission's findings in Case No. IPC-E-14-22. Staff further maintained that the negotiated solar integration charges in the Agreement are reasonable.

Staff reviewed all of the contract provisions and determined the Agreement's terms were reasonable and comply with prior Commission Orders. Therefore, Staff recommended the Commission issue an Order accepting the Agreement between Idaho Power and Clark Solar 3, incorporating the avoided cost rates consistent with Idaho Power's Replacement Appendix E.

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<sup>1</sup> For comparison purposes, the 20-year levelized rate for the Agreement as originally submitted is \$61.23/megawatt-hour (MWh) and the rate from the Replacement Appendix E is \$60.67/MWh. The estimated 20-year contractual obligation based upon the originally submitted prices is \$103,602,890 and the estimated 20-year contractual obligation with the revised prices is \$102,562,148. The levelized integration charge contained in the ESA is the same in both instances at \$4.60/MWh.

Staff further recommended the Commission declare that all payments for purchases of energy under the Agreement be allowed as prudently incurred expenses for ratemaking purposes.

***Clark Solar 3 Comments***

On December 19, 2014, Clark Solar 3 filed its comments with the Commission agreeing to adjustments consistent with those approved by the Commission in the Grand View Solar and Boise City Solar contracts, but with capacity payments as reflected in Appendix F. Clark Solar 3 characterized the methodological adjustments as “basically incomprehensible to a person of ordinary intelligence” and maintained that the price difference was “certainly within a margin of error inherent in avoided cost estimations” but decided “it is not worth the effort required to contest [the adjustments].” Clark Solar 3 Comments at 4.

Intermountain Energy Partners recommended approval of the pricing in Appendix F which reflects a first deficit year for Idaho Power in 2016. IEP maintained that its Agreement became a binding contractual obligation between the parties when it was executed on October 13, 2014. IEP argued that, as of that date, the Commission-approved IRP methodology contemplated a first deficit year of 2016. IEP acknowledged that, subsequent to the parties entering into their Agreement, the Commission issued an Order confirming Idaho Power’s use of a capacity deficit date of 2021. However, IEP stated that the Commission should adhere to its well-established principle that Commission Orders operate prospectively only.

***Idaho Power Reply***

On December 23, 2014, Idaho Power filed reply comments requesting that the Commission affirm the pricing in Replacement Appendix E that utilizes a first capacity deficit of July 2021. Idaho Power argued that, despite IEP’s legally enforceable obligation argument, the agreement between the parties is not binding until it is reviewed and approved by the Commission. The Company maintained that the Commission has already decided that 2021 is the appropriate capacity deficit for use in determining avoided costs under the incremental IRP methodology. Consequently, Idaho Power asked that the Commission affirm that July 2021 is the proper first capacity deficit for the calculation of avoided cost rates for Clark Solar 3’s contract.

***Intermountain Energy Partners Sur-Reply***

On December 24, 2014, Intermountain Energy Partners filed a Motion requesting permission to file sur-reply in response to Idaho Power’s reply comments. On December 31,

2014, the Commission granted IEP's Motion. Order No. 33203. Intermountain Energy Partners filed sur-reply comments on January 5, 2015. IEP informed the Commission that after consideration of legal arguments and business practicalities, it agreed to accept the prices in Replacement Appendix E as submitted by Idaho Power in the Company's initial comments filed with the Commission on November 20, 2014. IEP requested that, based on agreement between the parties as to the appropriate appendix, the Commission consider the matter fully submitted and issue an Order approving the contract.

### **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.

Congress enacted PURPA in response to a national energy crisis. "Its purpose was to lessen the country's dependence on foreign oil and to encourage the promotion and development of renewable energy technologies as alternatives to fossil fuels." *FERC v Mississippi*, 456 U.S. 742, 745-46 (1982). To encourage the development of renewable energy resources, PURPA requires that electric utilities purchase generation produced by QFs under a federal rate mechanism (i.e., avoided cost) that is established and implemented by state utility commissions. 18 C.F.R. § 292.304(b)(2); Order No. 32697 at 7. Unfortunately, PURPA does not address and FERC regulations do not adequately provide for consideration of whether the utility being forced to purchase QF power is actually in need of such energy.

Idaho Power's 2013 Integrated Resource Plan does not reflect that the utility is in need of energy to reliably serve its customers. And yet, in less than four months time, 13 QFs have contracted with Idaho Power for nearly 400 MW of solar generation – all expected to be on-line and producing power by the end of 2016. The combined 20-year contractual obligation of these 13 projects is approximately \$1.4 billion. As we have previously stated, 100% of the costs of QF generation are passed on to ratepayers.

The purpose of utilizing the IRP methodology for these projects is to more precisely value the energy being delivered to the utility. We appreciate the diligence of Commission Staff in reviewing and modifying the variables used within the incremental cost IRP methodology in order to produce an avoided cost that more accurately reflects the value of the energy from the generation resource. The IRP methodology must be implemented in a way that recognizes the actual generation characteristics of each project. We find that the prices contained in Replacement Appendix E are just and reasonable. We, therefore, approve the Agreement, including Replacement Appendix E, between Idaho Power and Clark Solar 3, LLC without material change or condition. We find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

We recently undertook a detailed review of the implementation of PURPA in Idaho. *See generally* GNR-E-11-03. This Commission considered changes to numerous terms and conditions contained in PURPA agreements. Recent modifications of variables within the incremental cost IRP methodology confirm that the methodology provides flexibility that allows us to accurately value each QF's unique capability to deliver its resources. However, QFs continue to request contracts with Idaho Power in significant enough numbers that we remain concerned about the Company's ability to balance the substantial amount of must-take intermittent generation and still reliably serve customers. While we are pleased with the progression of the IRP methodology, avoided cost rates are not the only terms to a PURPA contract. The utilities are in the best position to inform the Commission if review of additional PURPA contract terms and conditions is warranted.

### **ORDER**

IT IS HEREBY ORDERED that the Agreement between Idaho Power and Clark Solar 3, utilizing pricing in Replacement Appendix E, 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 8<sup>th</sup>  
day of January 2015.

  
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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

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