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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S PETITION TO DETERMINE)	CASE NO. IPC-E-15-18
PURPA CONTRACT ELIGIBILITY FOR TEN)	
DISAGGREGATED 100 KW SOLAR)	COMMENTS OF THE
PROJECTS.)	COMMISSION STAFF
)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Daphne Huang, Deputy Attorney General, and responds to the Notice of Application and Notice Modified Procedure issued on June 24, 2015. The Staff submits the following comments in this case.

BACKGROUND

On June 26, 2015, Idaho Power Company ("Idaho Power" or "Company") filed a Petition with the Commission to determine the contract-length eligibility for ten solar projects proposed to Idaho Power by Site Based Energy ("SBE") under the Public Utility Regulatory Policies Act (PURPA). Specifically, the utility asks the Commission to issue an Order finding that Site Based Energy's ten 100 kilowatt (kW) projects are actually a single 1 megawatt (MW) project "disaggregated" into ten 100 kW projects. The issue of whether this is a single large project or ten smaller projects will determine which one of two avoided costs methodologies is used to calculate

the rate Idaho Power must pay for power, as well as the appropriate length of the PURPA contract(s). Idaho Power requests that the Commission find that Site Based Energy's project is only eligible for a single contract with a term of five years, or whatever maximum contract term the Commission sets in Case No. IPC-E-15-01, for which an Order is pending at the time its Petition was filed in this case and when these comments were prepared.

1. PURPA and Avoided Costs

Under PURPA, electric utilities such as Idaho Power must purchase electric energy from qualifying facilities (QFs) generally located in Idaho at rates approved by this Commission. 16 U.S.C. § 824a-3. The purchase or "avoided cost" rate must be "just and reasonable to the electric consumers . . . and in the public interest" and "shall not discriminate against [QFs]." 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304.

The Commission has established two methods of calculating avoided cost, depending on the size of the QF project: (1) the Surrogate Avoided Resource (SAR) methodology; and (2) the Integrated Resource Plan (IRP) methodology. *See* Order No. 32697 at 7-8. The SAR methodology applies to wind and solar QFs with a design capacity of up to 100 kW. In other words, the "eligibility cap" for published rates for wind and solar QFs is set at 100 kW. When a solar QF project is larger than the 100 kW eligibility cap, the avoided cost rates for the project must be individually negotiated by the QF and the utility using the IRP methodology. Order Nos. 32697 at 2; 32176.

Intertwined with the issue of the appropriate avoided cost methodology (SAR or IRP), is the issue of contract length. The contract length for SAR-based contracts is 20 years. Order No. 33253 at 4. Currently, the contract length for IRP-based contracts is five years while the Commission investigates the issue. Order Nos. 33222, 33250.¹

¹ In January 2015, Idaho Power filed a petition in Case No. IPC-E-15-01, asking the Commission to reduce the length of new IRP-based PURPA contracts from 20 years to two years. The Commission granted temporary relief to Idaho Power and established a contract length of five years while the 15-01 case is under investigation.

2. The Petition

Idaho Power states it received “submissions for ten 100 kW PURPA solar QF projects, all from the same developer, John Reuter, from Site Based Energy.” Petition at 2, Atch. Nos. 1-10. The utility states, “These ten projects are all located at the same site, on the same contiguous property, and divided into ten sections.” *Id.* According to Idaho Power, “Each Application appears to be nearly identical, except for the differing Name of Facility (WRCE 1 through 10, respectively) and the corresponding GPS coordinates for each project.” *Id.*

Idaho Power notes that “[e]ach Application requests a contract term of 20 years, requests published avoided cost rates, and states, ‘The facility will be owned by a separate owner than all other facilities within 1 mile, including other facilities at the same site.’” *Id.* at 4 *citing* Exhibit Nos. 1-10, Applications at 2. The utility claims that it “has not been provided with any evidence of separate ownership, nor was Idaho Power able to confirm that the proposed entities are registered with the Idaho Secretary of State.” *Id.* at 4.

Idaho Power asserts, “Site Based Energy has specifically designed and proposed its project – disaggregated into 100 kW increments – in an attempt to avoid application of the Commission’s interim order limiting the maximum contract term to five years.” *Id.* at 3. Idaho Power asks the Commission to “direct that the five year maximum contract term limitation currently in place for projects over the published rate eligibility cap be applicable to these ten 100 kW disaggregated solar projects.” *Id.*

STAFF ANALYSIS

1. Difference in Rates and Contract Length

The significance of whether Site Based Energy's proposed project is considered a single 1 MW project or 10 co-located 100 kW projects is primarily that the avoided cost rates and contract length will be substantially different. If the project is deemed to be a single 1 MW project, its avoided cost rates will be determined using the IRP Methodology and it will currently be limited to a maximum contract length of five years. If the project is deemed to be 10 separate 100 kW projects, the rates will be determined using the SAR Methodology and the projects will be entitled to 20-year contracts. An approximate comparison of the avoided cost rates under each methodology is shown below.

Rate Calculation Method	5-year Levelized \$/MWh	20-year Levelized \$/MWh
SAR-based rate	\$36.96	\$68.70
IRP-based rate	\$33.49	\$51.22*

* Contracts under the IRP Methodology are currently limited to 5-year terms; therefore, 20-year contracts are currently not actually available.

Because rates have not been computed specifically for this project under the IRP Method, Staff, based on production requests to Idaho Power, has estimated them based on rates computed for a recent solar project proposed immediately prior to the Site Based Energy request, with an estimated online date of 2017.

As shown in the table, rates would be highest for a 20-year contract with SAR-based rates, and lowest for a 5-year contract with IRP-based rates. Rates for 5-year contracts under either methodology are lower than 20-year rates because 5-year rates do not include a portion for capacity, since Idaho Power's first capacity deficit does not occur until 2024. Note that contract length makes a far bigger difference in the rates than whether rates are based on the SAR or the IRP methodology.

2. Compliance with FERC Regulations

FERC regulations relating to qualifying facility size and geographic separation are contained in 18 C.F.R. § 292.204(a). Those rules state the following, in pertinent part:

18 C.F.R. 292.204 Criteria for qualifying small power production facilities.

(a) *Size of the facility*—(1) *Maximum size*. Except as provided in paragraph (a)(4) of this section, the power production capacity of a facility for which qualification is sought, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts.

(2) *Method of calculation*. (i) For purposes of this paragraph, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.

(ii) For purposes of making the determination in clause (i), the distance between facilities shall be measured from the electrical generating equipment of a facility.

Under SBE's proposal, the projects would each be only 100 kW in size, and would each have separate owners. No owner would own more than one 100 kW project. Collectively, the size of the projects would be 1 MW. Under either methodology, Staff believes that the project(s) would not violate FERC's QF criteria.

3. Prior Commission Orders on Disaggregation²

The Commission has addressed the issue of disaggregation in the past. In Phase II of the Commission's generic PURPA investigation (Case No. GNR-E-11-01), the Commission initiated an investigation into an avoided cost rate eligibility cap "that would prevent large wind and solar QFs from disaggregating into small projects in order to obtain published avoided cost rates that exceed a utility's actual avoided cost." Order No. 32195. In initiating Phase II, the Commission stated that "[t]his Commission is supportive of all small power producers contemplated by PURPA, including wind and solar, and it is not the Commission's intent to push small wind and solar QF projects out of the market." Order No. 32176 at 11. The Commission was concerned that large QF projects were disaggregating into smaller QF projects in order to be eligible for published avoided cost rates that may not be just and reasonable to the utility customers nor in the public interest. Order No. 32195 at 3.

The Commission ultimately determined that it was appropriate to set a 100 kW eligibility cap for published avoided cost rates for wind and solar QFs, while projects larger than 100 kW would be entitled to PURPA contracts with avoided cost rates calculated through use of the IRP Methodology. Order No. 32262. The Commission found that any attempt to implement criteria in an effort to prevent disaggregation "would be met by attempts to circumvent such criteria." *Id.* at 8. The Commission emphasized that PURPA and this State's published rate structure were never intended to promote large scale wind and solar development to the detriment of utility customers. The Commission further found that a 100 kW threshold for wind and solar QFs would provide a certainty to the parties in negotiations that disaggregation criteria would not. *Id.* The Commission

² In these comments, Staff will describe the configuration of SBE's projects as "co-located." The term "disaggregated" has been applied in the past to wind projects because, in those instances, a single project owner developed multiple projects immediately adjacent to each other. Under SBE's proposal, projects would be located immediately adjacent to each other, but each project would have a separate owner. SBE would likely describe the projects as "aggregated" rather than "disaggregated," so to avoid controversy and confusion, Staff is using the term "co-located."

stated, "While we recognize the impact that this decision will have on small wind and solar projects, it would be erroneous, and illegal pursuant to PURPA, for this Commission to allow large projects to obtain a rate that is not an accurate reflection of the utility's avoided cost for the purchase of the QF generation." *Id.*, citing *Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 623, 917 P.2d 766, 780 (1996), citing *Connecticut Light & Power Co.*, 70 FERC 61,012 (1995), *reconsid. denied*, 71 FERC 61,035 (1995).

In yet a third phase of the generic investigation (Case No. GNR-E-11-03), the Commission took on a more comprehensive review of both the SAR and IRP methodologies, including the eligibility cap for published rates. In Order No. 32697, the Commission stated,

A 100 MW wind farm or solar project can be broken up into 10 aMW pieces in order to obtain multiple published rate contracts, i.e., disaggregation. When a 100 MW wind or solar project is disaggregated, we find the SAR Methodology no longer produces a rate that accurately reflects the value of the energy to the utility. A 100 MW project is not even eligible under PURPA nor is a utility bound to purchase power from a 100 MW facility under PURPA's "must purchase" provision. 18 C.F.R. § 292.204(a). Therefore, to prevent large projects from disaggregating in order to not only become eligible under PURPA but also obtain published avoided rates, and based on the unique characteristics of wind and solar resources to disaggregate, we find that the eligibility cap for published avoided cost rate contracts for wind and solar projects shall be set at 100 kW or less. Congress intended to allow PURPA cogeneration and small renewable projects to produce and sell power without the burden of being regulated as an electric utility. Congress did not intend for multi-national corporations to fund large wind farms for the benefit of their shareholders and the detriment of the utilities' ratepayers. 18 C.F.R. § 292.304(a). Indeed, PURPA transactions are intended to hold ratepayers harmless. This finding is just and reasonable and consistent with PURPA and FERC regulations.

Order No. 32697 at 13.

The Commission established a 100 kW cap in determining wind and solar project eligibility for published avoided cost rates clearly with the intent of preventing large projects from disaggregating into several smaller ones for the purpose of obtaining higher rates. In its comments filed in that case, the Commission Staff believed that a 100 kW cap would be small enough to prevent disaggregation of wind and solar projects. While this seems to have proven true for wind projects, it may not be true for solar projects. This is because the smallest practical increment for solar is about 0.3 kW, the approximate capacity of a single solar panel, and because typical solar projects consist of clusters of many 0.3 kW panels.

4. Compliance with Prior Commission Orders

SBE's proposed projects may not technically violate prior Commission orders. Based on SBE's assertion, each project will have a separate owner, and each project will be limited to 100 kW. However, there is a single developer, 10 adjacent projects, and a single point of interconnection. Staff believes there is legitimate uncertainty about whether the proposed projects violate the intent of prior Commission orders. Clearly, the Commission intended to prevent larger projects from being broken into smaller ones in order to become eligible for higher avoided cost rates.

SBE contends that its proposal is not a large project broken into several smaller ones, but is instead a collection of small projects assembled at one location for the purpose of taking advantage of possible economies of scale. For example, each project will have a separate owner, property lease, PV panels, inverters, meters, QF certificate, maintenance agreement, power sales agreement, and interconnection agreement, yet will be located at the same site, developed by the same developer, have equipment procured from the same suppliers at the same time, constructed at the same time by the same contractor, and will likely share a transformer and a single point of interconnection.

While there is room for debate about whether it is necessary for a project to satisfy both the letter and the intent of Commission orders, nonetheless, Staff believes this case presents questions that need to be addressed. SBE's project is just the first to be proposed consisting of multiple 100 kW pieces. Because solar can be developed in such small increments, Staff believes it is probable that additional similar proposals will follow as interest in solar grows and costs continue to decline. Staff believes that prior Commission orders are insufficient to properly address the emergence of co-located solar projects. Staff believes the Commission needs to further refine and develop more specific rules that can be more effectively applied to the myriad of solar project configurations that may be proposed in the future.

Staff believes that the best approach to address issues related to disaggregation and co-location is to establish a specific set of rules.

5. Establish Disaggregation/Co-Location Rules

As stated earlier, at the time the Commission was dealing with disaggregation of wind projects, it surmised that any attempt to implement criteria in an effort to prevent disaggregation would be met by attempts to circumvent such criteria. Order No. 32262. Therefore, it declined to

adopt specific criteria. However, while the Commission expressed its intent to prohibit disaggregation, the absence of criteria does nothing to prevent it from occurring.

The Commission could develop rules that would more carefully define what constitutes a single project for purposes of avoided cost eligibility. Those rules would likely include criteria related to such things as common ownership, site-permitting, equipment procurement, construction contracts, and maintenance agreements, as well as the use of shared facilities such as inverters, transformers, metering, switching, protective equipment, fencing, roads, and interconnection equipment. Rules would also have to be established regarding the proximity of projects and perhaps the collective sizes of co-located facilities to be considered eligible for rates and contract lengths under specific avoided cost methodologies.

In developing a set of disaggregation standards, Staff believes the Commission has two choices. First, if the Commission simply wishes to resolve this case, then it might consider using rules developed by the Oregon Department of Energy to determine the eligibility for business energy tax credits (BETCs). The Oregon Department of Energy promulgated the BETCs Administrative Rules for issuing tax credits for qualifying renewable energy resources. Admin. Rules Chapter 330, Division 90 (330-090-0105). In particular, the Department has developed rules addressing the distinction between single and multiple renewable energy facilities that might be useful in this matter. Admin. Rules 330-090-0120(1)(2) (“eligible facilities & required information”).

(A) Renewable energy facilities will be determined to be a single facility, despite the number of applications, owners or construction phases, if three or more of the following apply:

- (1) The facility is located on one or more adjacent parcels of land;
- (2) The facility has been recognized in a license or permit as a single facility by a federal, state, county, city or local siting/planning authority, or the facility has obtained or applied for siting or land use approval and other applicable permits, licenses or site certificates as a single facility or on a single application;
- (3) When the facility is designed to generate renewable energy, the construction of the facility is performed under the same contract with a general contractor or multiple contracts entered into within one year of each other with one or more general contractors. If facilities will be completed in phases over time, the applicant must demonstrate that each of the phases of the facility would independently qualify as a single facility and that each phase of the facility is not interdependent

in purpose or the manner in which it will be owned, financed, constructed, operated, or maintained or the facilities or phases of the facility will be determined to be one facility for the purposes of these rules;

- (4) The facility owners have entered into or expect to enter into agreements to share project expenses, personnel, capital investments including generating equipment or other resources related to the facility;
- (5) The generating equipment for the facility was purchased by the same person or persons who own or operate the facility or have taken action under any of the above factors;
- (6) A facility is connected to the grid through a single connection or multiple connections when there is a shared net metering, power purchase or other applicable transmission agreement; or
- (7) Other factors which demonstrate that the facility is not a separate and distinct facility based on its construction, operation, maintenance and output.

A second option for the Commission's consideration is to direct the utilities to propose rules that could serve as starting points for consideration by all interested parties. A separate proceeding may be initiated for development of co-location rules in order to ensure all interested parties have the opportunity to participate. The current proceeding may not be an appropriate forum to develop such rules because it is narrowly focused on a petition by Idaho Power related to a single, project-specific proposal. Co-location rules would affect all three utilities, in addition to many yet to be proposed projects.

Because Site Based Energy appears to have configured its project to technically comply with prior commission orders, Staff recommends that the Commission approve Site Based Energy's proposal for 10 separate 100 kW projects with eligibility for published rates and a 20-year maximum contract length. However, Staff also recommends that the Commission open a new docket for the purpose of developing rules for managing co-located projects going forward, whether by adopting rules similar to Oregon's BETC rules, or by directing the utilities to propose rules for consideration by all interested parties. Staff further recommends that any additional solar projects proposed under the SAR methodology be held pending a Commission decision in this case.

6. Community Solar Exception

Site Based Energy is not describing its proposal as a "community solar" or "shared solar" project. Under SBE's proposal, each 100 kW increment would have a separate owner, whereas under many community solar models, a single owner owns the entire facility and individual participants lease a portion of the project or fund a portion of the ownership cost, then receive the proceeds from the sale of their "share" of energy produced. Under another common model for community solar, a single entity owns the facility, then contracts with subscribers who, with little or no upfront payment, purchase a portion of the output at a contracted per kilowatt-hour rate. Community solar projects provide opportunities for customers who may not have the desire or the ability to construct projects on their own home, business or property to participate in solar projects. Community solar projects can possess advantages over rooftop solar because of better siting, better maintenance, and economies of scale.

Solar projects can consist of everything from small rooftop systems, to community solar projects, to utility-scale facilities. Currently, there are two primary mechanisms for solar projects to receive financial compensation from the utility for their generation. Very small systems—residential systems under 25 kW and commercial systems under 100 kW—are eligible for net metering. Under net metering, the solar generation offsets energy that would otherwise be purchased from the utility. Currently, energy produced via net metering is valued at the full retail rate which is an attractive mechanism for projects that can qualify.

Projects that do not qualify for net metering must sell power to the utility as a PURPA project. Under PURPA, projects can sign a non-firm, tariff-based contract (Schedule 86 for Idaho Power), or sign a long-term contract with rates determined either under the SAR or the IRP methodology.

A community solar project would most likely have to pursue a PURPA contract rather than net metering because community solar projects typically would not have energy consumption that could be offset. Although community solar projects could be accommodated under existing rules for PURPA contracts, Staff believes there is merit in devising rules specifically to manage community solar due to its distinguishing characteristics.

If the Commission wishes to encourage or accommodate community solar projects as an alternative to rooftop solar or solar development under PURPA, specific rules could be developed dictating which avoided cost methodology shall be used to determine rates. Rules could also establish eligibility for maximum contract length and, perhaps if necessary, set a limit on the

amount of solar development that could occur. Rates could be determined using either the SAR or the IRP methods, and maximum contract lengths could be 20 years or something less. Furthermore, the rules could be a hybrid of existing rules. For example, rates could be determined using the SAR method but maximum contract length could be restricted to a shorter period.

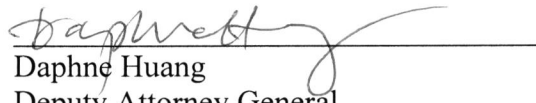
If the Commission wishes to pursue alternative development of small community or co-located solar projects, Staff recommends the utilities be directed to submit proposed definitions for "community solar" and rules to manage it.

RECOMMENDATIONS

Staff recommends the following:

1. That the Commission approve Site Based Energy's proposal for 10 separate 100 kW projects with eligibility for published rates and a 20-year maximum contract length because the proposal does not appear to violate FERC rules nor technically violate prior Commission orders.
2. That the Commission open a new docket for the purpose of developing rules for managing co-located projects.
3. That the Commission consider whether specific rules are necessary or desirable for community solar projects. This issue could be addressed in conjunction with developing rules for co-located projects under a SAR methodology or in a separate docket.

Respectfully submitted this 14th day of August 2015.


Daphne Huang
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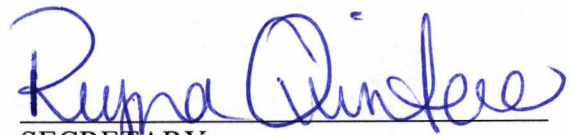
CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 14th DAY OF AUGUST 2015, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF.**, IN CASE NO. IPC-E-15-18, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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