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## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF	)	
IDAHO POWER COMPANY FOR A	)	CASE NO. IPC-E-16-21
DECLARATORY ORDER REGARDING	)	
PROPER AVOIDED COST PRICING FOR	)	STAFF COMMENTS
JACKPOT SOLAR	)	
	)	

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Commission Staff, by and through Daphne Huang and Camille Christen, Deputy Attorneys General, now submit the following comments in response to the Commission's Notice of Petition and Notice of Modified Procedure. Order No. 33619.

### A. Background

#### *1. Petition for Declaratory Order*

On September 26, 2016, Idaho Power Company filed a Petition asking the Commission to issue a Declaratory Order regarding proper avoided cost pricing for Jackpot Solar under the Public Utility Regulatory Policies Act of 1978 (PURPA). The Company states that Jackpot Solar is requesting avoided cost pricing for four qualifying facilities (QF), each planned to have a nameplate capacity of 20 MW. The Company states that Jackpot Solar is requesting avoided cost pricing under the Company's incremental cost Integrated Resource Planning (IRP) method (as opposed to published or standard rates available to smaller QFs), calculated at the time of contracting.

The Company states that Jackpot Solar has said that it intends to continuously sell its power to the Company under PURPA for a period of 20 years. According to Idaho Power, it is capacity sufficient, for purposes of PURPA contracts, until July 2024. The Company states

Jackpot Solar has requested and argues it is entitled to avoided cost capacity rates, calculated at the time of the initial two-year contract, that are then locked-in for the duration of subsequent contract terms. The Company states that Jackpot Solar has referred to Commission Order Nos. 33357 and 333419 as supporting its interpretation.

The Company states that it has refused Jackpot Solar's request to lock-in avoided cost capacity rates at the time of the initial two-year contract. The Company argues that Jackpot Solar's interpretation is contrary to the Commission's decisions in Orders No. 33357 and 33419. The Company argues that the Commission was clear in those Orders that the proper avoided cost capacity rate is established at the start of each two-year contract term.

The Company seeks a declaratory ruling stating that the IRP-based avoided cost prices for negotiated (non-standard) PURPA contracts, including the capacity component, are to be calculated and reset prior to each successive two-year contract term; and that a QF is not entitled to lock-in an avoided cost rate beyond the two-year maximum contract term.

## **2. Public Utilities Regulatory Policies Act**

The Public Utilities Regulatory Policies Act (PURPA) was passed as part of the National Energy Act of 1978. The Act's goals include the encouragement of electric energy conservation, efficient use of resources by electric utilities, and equitable retail rates for electric consumers, as well as the improvement of electric service reliability. 16 U.S.C. § 2601 (Findings). Under the Act, the Federal Energy Regulatory Commission (FERC) prescribes rules for PURPA's implementation. 16 U.S.C. § 824a-3(a), (b). State regulatory authorities such as the Idaho Public Utilities Commission implement FERC rules, but have "discretion in determining the manner in which the rules will be implemented." *Idaho Power Company v. Idaho Pub. Util. Comm.*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013) (citing *F.E.R.C. v. Mississippi*, 456 U.S. 742, 751 (1982)).

PURPA requires electric utilities, unless otherwise exempted, to purchase electric energy from QFs. 16 U.S.C. § 824a-3; *see also* 18 C.F.R. § 292.101 (defining QFs), 292.303(a). In Idaho, the purchase rate for a utility's contract to purchase QF energy under PURPA must be approved by this Commission. *Idaho Power*, 155 Idaho at 789, 316 P.3d at 1287. The purchase rate for PURPA contracts shall not exceed the "incremental cost" to the utility, defined as the cost of energy which, but for the purchase from [the QF], such utility would generate or purchase from another source." 16 U.S.C. § 824a-3(d); 18 C.F.R. § 292.101(6) (defining avoided costs).

PURPA and FERC's implementing regulations are silent as to contract length; consequently, the issue is in the Commission's discretion. *See Afton Energy, Inc. v. Idaho Power*, 107 Idaho 781, 785-86, 693 P.2d 427, 431-32 (1984); *Idaho Power*, 155 Idaho at 782, 316 P.3d at 1280. Since PURPA was first implemented in Idaho, this Commission has periodically modified the maximum length for PURPA contracts. *See* Order No. 29029. In 2015, the term was reduced to two years for individually-negotiated contracts (those not subject to standard "published" rates). Order Nos. 33357, 33419. When it shortened the term, the Commission also determined that utilities should establish a capacity deficiency date at the time the initial contract is signed. Order No. 33357 at 25-26; Order No. 33419 at 9, 21-23. As long as the QF continuously sells power to the utility, the Commission decided that the QF would be entitled to payments for capacity based on the capacity deficiency date established at the time of the initial contract. Order No. 33357 at 25-26; Order No. 33419 at 9, 21-23.

#### **B. Rocky Mountain Power Comments**

In its Notice, the Commission invited feedback from affected utilities. Order No. 33619. PacifiCorp dba Rocky Mountain Power filed comments, noting its belief that the issues before the Commission in this matter are fact specific and "should not affect any party other than Idaho Power Company and Jackpot Solar." Rocky Mountain Comments at 2. According to Rocky Mountain, "[a]ny ruling in this case must preserve the current rule of law as it relates to the two-year term of power purchase agreements and the timing of when capacity rates are to be paid in avoided cost pricing under such agreements." *Id.* To the extent any issues raised in this case touch upon issues already determined in Commission Order Nos. 33357 and 33419, Case No. IPC-E-15-01, Rocky Mountain asserts that an "attempt to change them would be barred as an improper collateral attack" under *Idaho Code* § 61-625, which provides that "[a]ll orders and decisions of the commission which have become final and conclusive shall not be attacked collaterally."

Rocky Mountain asserts that, on the narrow issue of when an avoided cost capacity rate is calculated and paid, Commission Order No. 33419 "is clear and unambiguous." Rocky Mountain Comments at 3. Rocky Mountain then quotes extensively from Order No. 33419, including the Commission's determination that

*[a] capacity rate calculated at the start of each specified term rather than upon a QF's initial contract, is a truer reflection of the utility's avoided cost for*

*capacity*. The capacity adjustment mechanism thus ensures the QF receives the full avoided cost of the utility, consistent with FERC regulations.

*Id.* at 4, *quoting* Order No. 33419 at 23 (emphasis by Rocky Mountain).

### C. Staff Comments

Staff agrees with Rocky Mountain. First, Staff believes that Order No. 33419 is clear and unambiguous that a capacity rate is calculated for each *specified two-year* term.

In Order No. 33357, we determined that “the specified term” for new standard IRP-based contracts is two years. Thus [QFs] are entitled to receive avoided cost capacity rates for the specified term calculated at either the time of delivery or at the time they enter into their contract/obligation.

Order No. 33419 at 22 (emphasis original). As quoted by Rocky Mountain, the Commission went on to find that “[a] capacity rate calculated at the start of each specified [two-year] term rather than upon a QF’s initial contract, is a truer reflection of the utility’s avoided cost for capacity.” *Id.* at 23. The Commission directed utilities to establish a capacity deficiency date at the time when a QF’s initial IRP-based contract is signed, to recognize that “a QF continu[ously] provid[ing] energy to a utility through [such date] will be paid for its capacity contribution.” *Id.* at 22. The Commission noted, “until a QF enters into a contract during which that capacity deficit date occurs, the avoided cost capacity rate is zero.” *Id.*

Given the language of the Commission’s Orders, Jackpot Solar is not entitled to lock-in an avoided cost capacity rate at the time of its initial contract, to apply to any and all future two-year contracts. Rather, Jackpot Solar is entitled to lock-in a capacity deficiency date, at which time it would receive an avoided cost capacity rate. The rate would be calculated at the start of the two-year term during which the capacity deficiency date occurs. Accordingly, Staff supports a Declaratory Order providing that Jackpot Solar is not entitled to lock-in an avoided cost capacity rate at the time of any initial contract with Idaho Power during which Idaho Power is capacity surplus.

Second, to the extent Jackpot Solar intends to attack the language of Order Nos. 33357 or 33419, Staff agrees with Rocky Mountain that such attack is barred by *Idaho Code* § 61-625, which precludes collateral attack on a Commission Order that is final and conclusive. The Commission’s Order No. 33357 provided:

THIS IS A FINAL ORDER. Any party interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in [this case] may petition for reconsideration within twenty-one (21) days of the service



date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in [this case].

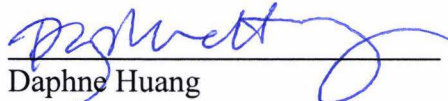
Order No. 33357 at 33. In Order No. 33419, the Commission provided:

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this final Order on Reconsideration or other final or interlocutory Orders previously issued in this Case . . . may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.

Order No. 33419 at 27.

The time for reconsideration, appeal, or other challenge to these Orders, entered August 20, 2015 and November 5, 2015 respectively, has passed. *Idaho Code* §§ 61-626, 61-627. The language from these final and conclusive Orders does not support Jackpot Solar's request to lock-in an avoided cost capacity rate at the time of an initial two-year contract during which Idaho Power is not capacity deficient. Accordingly, Staff recommends that the Commission issue a Declaratory Order that Jackpot Solar is not entitled to lock-in an avoided cost capacity rate at the time of an initial two-year contract with Idaho Power during which Idaho Power is capacity surplus.

Respectfully submitted this 8<sup>th</sup> day of November 2016.

  
Daphne Huang  
Camille Christen  
Deputy Attorneys General

N:IPC-E-16-21\_djh\_cc\_Staff Comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 8<sup>TH</sup> DAY OF NOVEMBER 2016, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF** IN CASE NO. IPC-E-16-21, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY