

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S PETITION TO MODIFY)	CASE NO. IPC-E-15-01
TERMS AND CONDITIONS OF PURPA)	
PURCHASE AGREEMENTS)	
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IN THE MATTER OF AVISTA)	
CORPORATION'S PETITION TO MODIFY)	CASE NO. AVU-E-15-01
TERMS AND CONDITIONS OF PURPA)	
PURCHASE AGREEMENTS)	
)	
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IN THE MATTER OF ROCKY MOUNTAIN)	
POWER COMPANY'S PETITION TO)	CASE NO. PAC-E-15-03
MODIFY TERMS AND CONDITIONS OF)	
PURPA PURCHASE AGREEMENTS)	NOTICE OF SCHEDULING
)	
)	NOTICE OF
)	TECHNICAL HEARING
)	
<hr/>)	ORDER NO. 33253

On January 30, 2015, Idaho Power Company filed a Petition to reduce the length of the contracts under which electric utilities must purchase energy generated by qualifying facilities (QFs) pursuant to the Public Utility Regulatory Policies Act (PURPA). The Commission issued a Notice of Petition setting a February 20, 2015 deadline for petitions to intervene. Order No. 33222. The Commission also granted interim relief, temporarily reducing Idaho Power's PURPA contract lengths from 20 years to five years pending further order. *Id.*

On February 27, 2015, Avista Corporation petitioned for the same temporary and permanent relief granted Idaho Power. Rocky Mountain Power Company filed a petition seeking similar relief on March 2, 2015. On March 13, 2015, the Commission issued Order No. 33250 consolidating the Avista and Rocky Mountain Petitions with the Idaho Power case. In that Order, the Commission set a new deadline of March 27, 2015, for petitions to intervene in the consolidated matter. *Id.*

BACKGROUND

The Utilities in this consolidated case seek to modify the length of their contracts entered under PURPA. That Act requires electric utilities to purchase electric energy from QFs

at rates approved by the applicable state regulatory agency – in Idaho, this Commission. 16 U.S.C. § 824a-3; *Idaho Power v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013). The purchase or “avoided cost” rate 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 cost”).

This Commission has established two methods for calculating avoided cost, depending on the size of the QF project: (1) the surrogate avoided resource (SAR) methodology (used to calculate “published rates”), 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 kilowatts (kW), or up to 10 average megawatts (aMW) for QFs of all other resource types. *Id.* In other words, the “eligibility cap” for published rates for wind and solar QFs is 100 kW and the cap for all other QF projects is 10 aMW. The IRP methodology applies to any QF with a design capacity above the eligibility cap for published rates. *Id.* The purpose of utilizing a different methodology for larger projects is to more precisely value the energy by recognizing the different generation characteristics of each large project. Order Nos. 32697 at 2; 32176.

PURPA, and regulations implementing the Act, are silent as to contract length; consequently, the issue is in the Commission’s discretion. *See Afton Energy 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. On February 5, 2015, the Commission granted Idaho Power interim relief by reducing the length for PURPA contracts from 20 years to five years, pending further order. Order No. 33222 at 4, 6.

THE PREHEARING CONFERENCE

Consistent with Order No. 33222, an informal prehearing conference was held on March 10, 2015. The prehearing conference was attended by all the parties granted intervention to date except for Amalgamated Sugar. At the prehearing conference, the parties discussed the pending Petition and Cross-Petitions to Clarify Order No. 33222, and developed a schedule for processing this consolidated proceeding.

A. The Petitions to Clarify

Various parties in the Idaho Power case filed a total of four Petitions or Cross-Petitions to Clarify Commission Order No. 33222. These Petitions can be divided into two sets. Each set is discussed in greater detail below.

1. *Petition and Cross-Petition to Clarify by Intermountain Energy Partners and Renewable Energy Coalition*

Idaho Power stated on pages 1-2 of its Petition that its request to reduce PURPA contract length is “limited to transactions with proposed QF projects that exceed the published rate eligibility cap.” However, in its “Prayer for Relief” on page 36, the Company characterized its requested relief as an Order “directing that the maximum required term for any Idaho Power PURPA [contract] be reduced from 20 years to two years.” (Emphasis added.) Order No. 33222, granting interim relief, did not specify the type of PURPA contracts (e.g., SAR or IRP) to which the five-year interim relief applied.

On February 18, 2015, Intermountain Energy Partners (IEP) petitioned for clarification of Order No. 33222 under Rule 325. That rule allows any person to file a petition “to clarify any order, whether interlocutory or final.” IDAPA 31.01.01.325. In its Petition, IEP addresses the ambiguity of granting interim relief to any Idaho Power PURPA contract, where Idaho Power’s request for relief was purportedly aimed at reducing the contract length for large QF projects that exceed the published rate eligibility cap. *See* IEP Petition at 2. IEP suggested that the Commission clarify its Order by adding the following language:

IT IS HEREBY ORDERED that . . . the maximum contractual term for Idaho Power’s new PURPA contracts shall be five years, provided however this Order shall not apply to proposed QF projects that do not exceed the published rate eligibility cap.

IEP Petition at 1 (proposed language underlined).

The Cross-Petition for Clarification by Renewable Energy Coalition (REC) concurs with IEP’s Petition.¹ *See* REC Cross-Petition. REC’s Cross-Petition also observed that, in a discovery response dated February 24, 2015, Idaho Power conceded that its requested interim relief “is limited to transactions with proposed QF projects that exceed the published rate eligibility cap.” Resp. No. 1 to Simplot, *citing* Idaho Power Petition at 1-2. At the prehearing

¹ The Commission has also received a Petition to Intervene and Joinder in Petitions to Clarify by AGPower DCD, LLC and AGPower Jerome, LLC, which agrees with IEP’s and REC’s Petitions.

conference, all parties agreed that the Commission should clarify its Order to say that the five-year interim relief should not apply to QF contracts that are eligible for published avoided cost rates (i.e., SAR-based PURPA contracts).

Commission Findings: After reviewing IEP's and REC's Petitions, Idaho Power's initial Petition and interrogatory response, and our prior Order No. 33222 we grant the IEP and REC Petitions. We find it just and reasonable that the temporary five-year term limit not apply to new PURPA contracts eligible for published rates. We thus clarify Order Nos. 33222 and 33250 such that the interim relief granted to Idaho Power, Avista and Rocky Mountain applies to new PURPA contracts in excess of the published rate eligibility cap. *Idaho Code* § 61-624.

2. Cross-Petition for Clarification by Clearwater Paper and Simplot

On February 25, 2015, Clearwater Paper and Simplot also filed a Cross-Petition for Clarification that differed from the prior Petitions discussed above. Clearwater and Simplot proposed that the five-year term limit in Order No. 33222 should apply to only "new intermittent solar and wind projects exceeding 100 kW." Clearwater Cross-Petition at 3-4. In their Cross-Petition, Clearwater and Simplot argue that this limitation should apply because Idaho Power's initial Petition highlights the dramatic increase in "predominantly wind, and now, solar, QF projects coming on-line and under contract." *Id.* at 2-3. They maintain that "there is no record suggesting a need to reduce the maximum contract length for any type of resource other than wind and solar." *Id.* at 5.

Their Cross-Petition and proposed language were discussed at the March 10 prehearing conference. The parties reached no consensus. However, the parties agreed to recommend that the Commission set a March 19, 2015 deadline for responses to the Cross-Petition, and a March 26, 2015 deadline for Clearwater's and Simplot's reply.

Commission Findings: We adopt the proposed schedule for responses and reply, as agreed by the parties. The schedule will allow parties to fully address the Cross-Petition and provide a record upon which the Commission can decide this issue.

NOTICE OF INTERVENTION

YOU ARE HEREBY NOTIFIED that AgPower DCD, LLC and AgPower Jerome, LLC (collectively "AgPower") filed a Petition to Intervene out-of-time in the Idaho Power case on March 6, 2015. The Commission has received no written objections to this Petition to date.

Consequently, we grant late intervention to AgPower conditioned upon AgPower's acceptance of the schedule below and that they not unduly broaden the issues. Rule 73, IDAPA 31.01.01.073.

NOTICE OF SCHEDULING

YOU ARE FURTHER NOTIFIED that, based on discussion and agreement between the parties, the Commission adopts the following procedural schedule:

April 23, 2015	Staff/Intervenors file direct testimony
May 14, 2015	Staff/Intervenors file rebuttal testimony
June 11, 2015	Petitioners file rebuttal testimony

YOU ARE FURTHER NOTIFIED that the parties shall serve discovery, testimony, and exhibits among themselves by electronic mail pursuant to Rule 63, IDAPA 31.01.01.063. The parties have also agreed to expedite discovery between April 23 and May 14, 2015. The parties shall service the Commission Secretary with one printed copy of all discovery requests and responses.

NOTICE OF TECHNICAL HEARING

YOU ARE FURTHER NOTIFIED that the Commission will conduct a **technical hearing** in this matter, on **MONDAY, JUNE 29, 2015, COMMENCING AT 9:30 A.M. IN THE COMMISSION'S HEARING ROOM, 472 WEST WASHINGTON, BOISE, IDAHO** and continuing as necessary through Wednesday, July 1, 2015. Parties shall present their witnesses, prepared testimony and exhibits at the technical hearing. Rule 241.04.a, IDAPA 31.01.01.241.04.a. Exhibit numbers are assigned to each party in the Notice of Parties issued by the Commission.

YOU ARE FURTHER NOTIFIED that the dates, times, and locations of the customer hearings will be detailed in a subsequent Order.

YOU ARE FURTHER NOTIFIED that all hearings in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). Persons needing the help of a sign language interpreter or other assistance in order to participate in or to understand testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0338 (Telephone)
(208) 334-3762 (FAX)
E-Mail: secretary@puc.idaho.gov

YOU ARE FURTHER NOTIFIED that all testimony and exhibits in Case Nos. IPC-E-15-01, AVU-E-15-01, and PAC-E-15-03 must comport with the requirements of Commission Rules 61, 231, and 267. IDAPA 31.01.01.061, .231, .267. Consistent with Rule 61.01.a.iii., parties shall file an original (unbound and unstapled) and nine copies of all testimony and exhibits with the Commission Secretary on the dates such documents are due. One of the nine copies shall be marked as “reserved” for the court reporter and shall be unbound, unpunched and on plain single-sided paper.

YOU ARE FURTHER NOTIFIED that the record in this matter is available for public inspection during regular business hours at the Commission offices. The record is available on the Commission’s web site at www.puc.idaho.gov. Click on the “File Room” tab at the top of the page, scroll down to “Open Electric Cases,” and then click on the case numbers as shown on the front of this document.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission’s jurisdiction 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 and to implement FERC rules. The Commission may enter any final Order consistent with its authority under Title 61 and PURPA.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission’s Rules of Procedure, IDAPA 31.01.01.000, *et seq.*

ORDER

IT IS HEREBY ORDERED that Intermountain Energy Partners’ Petition for Clarification and Renewable Energy Coalition’s Cross-Petition for Clarification are GRANTED. We clarify that the five-year interim relief granted to Idaho Power in Order No. 33222, and

granted to Avista and Rocky Mountain in Order No. 33250, applies only to the Utilities' new PURPA contracts that exceed the published rate eligibility cap. *Idaho Code* § 61-624.

IT IS FURTHER ORDERED that responses to Clearwater Paper and Simplot's Cross-Petition for Clarification shall be due March 19, 2015, and any reply shall be due March 26, 2015.

IT IS FURTHER ORDERED that the Commission adopts the schedule for prefiling direct and rebuttal testimony as set forth in the body of this Order. Parties shall conform to the schedule set out above. Parties shall also comply with the discovery and filing procedures set out above.

IT IS FURTHER ORDERED that a technical hearing will commence in this matter on Monday, June 29, 2015, at 9:30 a.m. in the Commission's Hearing Room, and continue as necessary through Wednesday, July 1, 2015.

IT IS FURTHER ORDERED that AgPower DCD, LLC and AgPower Jerome, LLC's Petition to Intervene is granted.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 18th
day of March 2015.



PAUL KJELLANDER, PRESIDENT

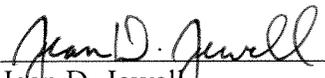


MACK A. REDFORD, COMMISSIONER



KRISTINE RAPER, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:IPC-E-15-01_AVU-E-15-01_PAC-E-15-03_djh2