

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE PETITION OF ) CASE NO. IPC-E-16-21**  
**IDAHO POWER COMPANY FOR A )**  
**DECLARATORY ORDER REGARDING ) NOTICE OF PETITION FOR**  
**PROPER AVOIDED COST PRICING FOR ) DECLARATORY ORDER**  
**JACKPOT SOLAR )**  
**) NOTICE OF**  
**) MODIFIED PROCEDURE**  
**)**  
**) ORDER NO. 33619**

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On September 26, 2016, Idaho Power Company petitioned the Commission for 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 and PURPA contracts 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, calculated at the time of contracting. The Company asks for a declaratory ruling that, under the circumstances described in its Petition, the proper avoided cost is determined at the beginning of each two-year contract term, not upon the initial contract; and that a QF is not entitled to lock-in an avoided cost rate beyond the two-year maximum contract term.

**BACKGROUND**

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, 292.303(a). In Idaho, the Commission must approve the purchase rate in a utility’s contract to buy QF energy under PURPA. *Idaho Power*, 155 Idaho at 789, 316 P.3d at 1287. The purchase rate for PURPA contracts 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. Also, the purchase rate shall not exceed the “incremental cost” to the utility, defined as the cost of the electric 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 contract length is left to 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. Ever since PURPA was implemented in Idaho, this Commission has periodically modified the length for PURPA contracts. *See* Order No. 29029. Initially, the Commission established a maximum contract term of 35 years, which it shortened to 20 years in 1987. Order Nos. 21018, 21630. The term was reduced to five years in 1996, and raised back to 20 years in 2002. Order Nos. 26576, 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. The Commission decided that, as long as the QF continuously sells power to the utility, 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.

### **NOTICE OF PETITION**

YOU ARE HEREBY NOTIFIED that the Company states that it has been in discussions with four QFs, Jackpot Solar North, Jackpot Solar South, Jackpot Solar West, and Jackpot Solar East, each of which is seeking to develop a 20 MW project. The Company collectively refers to the QFs as Jackpot Solar. The Company states that Jackpot Solar is seeking

negotiated PURPA contracts with IRP-based incremental rates (as opposed to published or standard rates available to smaller QFs). 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.

YOU ARE FURTHER NOTIFIED that the Company states that it is capacity sufficient, for purposes of PURPA contracts, until July 2024.

YOU ARE FURTHER NOTIFIED that the Company states Jackpot Solar has requested and argued that 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 33419 as supporting its interpretation.

YOU ARE FURTHER NOTIFIED that 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 contradicts the Commission's decisions in Orders No. 33357 and 33419. The Company argues that the Commission clarified in those Orders that the proper avoided cost capacity rate is established at the start of each two-year contract term.

YOU ARE FURTHER NOTIFIED that the Company seeks a declaratory ruling 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.

YOU ARE FURTHER NOTIFIED that Procedural Rules 101 and 102 provide for the issuance of declaratory rulings by the Commission. IDAPA 31.01.01.101 and .102. Pursuant to Rule 101, persons seeking such a declaratory ruling must state the ruling that the petitioner seeks, set out the factual allegations, and indicate the statute or other controlling law pertaining to the petition. IDAPA 31.01.01.101.02. Rule 102 provides that the notice of petition for a declaratory ruling will be issued to all affected utilities. IDAPA 31.01.01.102.

YOU ARE FURTHER NOTIFIED that the Petition and its attachments have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices. These documents are also available on the Commission's web site at

[www.puc.idaho.gov](http://www.puc.idaho.gov). Click on the “File Room” tab at the top of the page, then select “Electric Cases” and 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 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.*

YOU ARE FURTHER NOTIFIED that because the subject matter of the Petition for Declaratory Ruling may have generic ramifications, the Commission finds it appropriate to serve copies of this Notice on Avista Corporation dba Avista Utilities and PacifiCorp dba Rocky Mountain Power as potentially affected utilities. *See* IDAPA 31.01.01.102.

#### **NOTICE OF MODIFIED PROCEDURE**

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter, and that it will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Commission’s Rules of Procedure, IDAPA 31.01.01.201 through .204. The Commission notes that Modified Procedure and written comments have proven to be an effective means for obtaining public input and participation.

YOU ARE FURTHER NOTIFIED that the affected utilities shall have until **Tuesday, October 18, 2016**, to file written comments in support or opposition of the Petition. Any other person desiring to state a position on the Petition may file a written comment in support or opposition with the Commission **no later than Tuesday, November 8, 2016**.

YOU ARE FURTHER NOTIFIED that written comments must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this Petition shall be mailed to the Commission, the Company, and Jackpot Solar at the addresses reflected below:

Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street  
Boise, ID 83702-5918

Donovan Walker  
Lead Counsel  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, ID 83707-0070  
E-Mail: [dwalker@idahopower.com](mailto:dwalker@idahopower.com)

**Jackpot Solar:**

Peter Richardson  
Richardson Adams, PLLC  
515 North 27<sup>th</sup> Street (83702)  
P.O. Box 7218  
Boise, ID 83707  
Email: [peter@richardsonadams.com](mailto:peter@richardsonadams.com)

These comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at [www.puc.idaho.gov](http://www.puc.idaho.gov). Click the "Case Comment or Question Form" under the "Consumers" tab, and complete the comment form using the case number as it appears on the front of this document. These comments must also be sent to Idaho Power and Jackpot Solar at the e-mail addresses listed above.

YOU ARE FURTHER NOTIFIED that Idaho Power shall have until **November 22, 2016**, to file reply comments, if necessary.

YOU ARE FURTHER NOTIFIED that if no written comments or protests are received within the time limit set, the Commission will consider this matter on its merits and enter its Order without a formal hearing. If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

**ORDER**

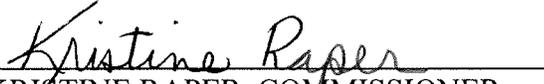
IT IS HEREBY ORDERED that copies of the Petition and Notice shall be served on the affected utilities – Avista Corporation dba Avista Utilities and PacifiCorp dba Rocky Mountain Power.

IT IS FURTHER ORDERED that the Petition of Idaho Power Company for Declaratory Ruling be processed by Modified Procedure, Rule 201-204 (IDAPA 31.01.01.201-

.204). The affected utilities may submit comments in this matter by no later than October 18, 2016. Persons interested in submitting written comments must do so no later than November 8, 2016. The Company may file a reply no later than November 22, 2016.

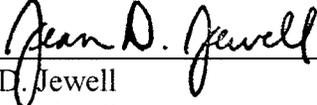
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day of October 2016.

  
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PAUL KJELLANDER, PRESIDENT

  
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KRISTINE RAPER, COMMISSIONER

  
\_\_\_\_\_  
ERIC ANDERSON, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary

O:IPC-E-16-21\_cc