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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)
COMPANY'S PETITION TO ESTABLISH) CASE NO. IPC-E-20-02
AVOIDED COST RATES APPLICABLE)
TO PURPA ENERGY STORAGE) PETITION TO ESTABLISH
QUALIFYING FACILITIES.) AVOIDED COST RATES
) APPLICABLE TO PURPA ENERGY
) STORAGE QUALIFYING
) FACILITIES
)

Idaho Power Company ("Idaho Power" or "Company"), pursuant to RP 53, hereby petitions the Idaho Public Utilities Commission ("IPUC" or "Commission") to initiate a proceeding to determine the proper avoided cost rates as well as contract terms and conditions applicable to, and to be included in the Public Utility Regulatory Policies Act of 1978 ("PURPA") contracts requested by energy storage Qualifying Facilities ("QF" or "QFs").¹

¹ On January 26, 2017, Idaho Power received four separate Schedule 73 applications from proposed battery storage projects requesting published avoided cost rate indicative pricing and 20-year contracts from: Franklin Energy Storage One, LLC (32 MW); Franklin Energy Storage Two, LLC (32 MW); Franklin Energy Storage Three, LLC (32 MW); and Franklin Energy Storage Four, LLC (32 MW). See Attachments 1-4. All proposed Franklin Energy Storage projects were submitted by the same

Idaho Power is a vertically integrated public utility electric service provider regulated in the state of Idaho by the IPUC and is the petitioner in this matter. PURPA requires Idaho Power, as a public utility, to purchase generation from cogeneration and small power production facilities that are certified as PURPA QFs at avoided cost rates and under contractual terms and conditions determined by the IPUC.

The Proposed Battery Storage Facilities, all of which exceed 100 kilowatts (“kW”) in size and vary from 20 megawatts (“MW”) to 32 MW, claim they are entitled to published avoided cost rates with a 20-year contract term. Idaho Power asserts that the Proposed Battery Storage Facilities and any other energy storage QFs be subject to a published rate eligibility cap of 100 kW.

Idaho Power seeks a determination from the Commission that energy storage QFs up to a maximum nameplate capacity of 100 kW are entitled to and eligible for published avoided cost rates and a 20-year maximum contract term -- and that energy storage QFs over 100 kW are entitled to and eligible for negotiated avoided cost rates determined by the incremental cost Integrated Resource Plan (“ICIRP”) methodology and a maximum contract term of two years.

developer. On February 13, 2017, Idaho Power received another Schedule 73 application from a separate proposed battery storage project from another developer: Black Mesa Energy, LLC (20 MW). See Attachment 5 to the Petition for Declaratory Order, Case No IPC-E-17-01.

Additionally, on January 21, 2020, Idaho Power received two Schedule 73 applications that were e-mailed over the Holiday weekend for two, 20 MW each, battery storage QFs from Black Mesa Energy 1 and Black Mesa Energy 2. These applications state, “Black Mesa Energy LLC, reiterates its previous request for an Energy Sales Agreement pursuant to Schedule 73 as requested on 2/10/2017 ... The project is an energy storage QF and qualifies for the “Other projects” avoided costs as found in 1:18-cv-00236-REB (Franklin Energy Storage v. Idaho PUC & Idaho Power).”

These seven proposed projects are hereafter referred to collectively as “Proposed Battery Storage Facilities.”

Idaho Power asks that the Commission issue Notice of this Petition, establish an Intervention Deadline, and set a formal Scheduling Hearing after the Intervention period at which the procedural schedule and scope of proceedings can be established.

In support of this Petition, Idaho Power states as follows:

I. BACKGROUND

On February 27, 2017, Idaho Power filed a Petition asking the Commission to issue a Declaratory Order regarding the proper contract terms, conditions, and avoided cost pricing for five battery storage facilities requesting contracts under PURPA. Case No. IPC-E-17-01. On July 13, 2017, the Commission issued Order No. 33785 granting Idaho Power's Petition for declaratory relief stating, "We find that, as storage facilities with design capacities that will exceed 100 kW each and with solar as their primary energy source, the projects are eligible for two-year, negotiated (IRP methodology) contracts." Order No. 33785, p 12-13. Subsequently, the Franklin Energy Storage projects ("Franklin") petitioned the IPUC for reconsideration alleging that the Commission had improperly considered Franklin's QF status in its determination.² On August 29, 2017, the Commission denied Franklin's Petition for Reconsideration. Order No. 33858.

Franklin then filed a Petition for Declaratory Order and Petition for Enforcement action against the IPUC at the Federal Energy Regulatory Commission ("FERC") to which FERC declined to act. FERC Docket EL-18-50-000. On May 30, 2018, Franklin filed a Complaint for Violation of the Federal Power Act, PURPA, and FERC Regulations with the United States District Court for the District of Idaho.³ The Federal

² Franklin Energy Storage Projects' Petition for Reconsideration, Aug. 3, 2017, Case No. IPC-E-17-01.

³ Case No. 1:18-cv-00236-REB.

Court heard argument on the IPUC's and Idaho Power's Motions to Dismiss, as well as cross-motions for summary judgment on February 7, 2019. On January 17, 2020, the Federal Court issued its Memorandum Decision and Order, denying the IPUC's and Idaho Power's motions to dismiss and for summary judgment, and granting in part Franklin's motion for summary judgment⁴ stating as follows:

3. Plaintiffs' [Franklin's] Motion for Summary Judgment (Dkt. 24) is GRANTED IN PART:

a. The Court finds that the Defendant IPUC Commissioners violated the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601 et seq., when they issued final order numbers 33785 on July 13, 2017 and 33858 on August 29, 2017. Such orders established an implementation plan that impermissibly classified the QF status of Plaintiffs' energy storage facilities that are certified under such Act as energy storage facilities. Classifying such facilities as "solar QFs" is outside the Commissioners' authority as state regulators and therefore in violation of federal law.

b. Defendants are permanently enjoined from enforcing or applying either of such IPUC final orders to Plaintiffs' facilities as if such facilities are classified as something other than energy storage QFs, to include but not be limited to classifying Plaintiffs' facilities as if they are "solar QFs" under the IPUC's prior implementation plan. Defendants are further permanently enjoined from considering the energy source input into Plaintiffs' energy storage QFs for the purpose of classifying the QFs in any way other than as energy storage QFs.

Memorandum Decision and Order, p 36-37, Case No. 1:18-cv-00236-REB, Document 62, Jan. 17, 2020.

⁴ Case No. 1:18-cv-00236-REB, Document 62.

However, the Federal Court also stated that it will not Order the IPUC to place any specific terms upon any power supply contract Idaho Power must enter with energy storage QFs⁵ stating:

4. Plaintiffs' Motion for Summary Judgment (Dkt. 24) is otherwise DENIED. The Court specifically declines to order Defendants [IPUC] to require utilities under their jurisdiction to afford energy storage QFs all rights and privileges afforded to "other QFs" under the IPUC's PURPA implementation plan.

Id., at p 37.

As previously referenced in footnote 1, subsequent to the Federal Court's January 17, 2020, Order, Idaho Power received two requests for PURPA contracts for proposed "energy storage QFs" citing to the Court's Order. On January 21, 2020, Idaho Power received two Schedule 73 applications that were e-mailed over the Holiday weekend for two, 20 MW each, battery storage QFs from Black Mesa Energy 1 and Black Mesa Energy 2. These applications state, "Black Mesa Energy LLC, reiterates its previous request for an Energy Sales Agreement pursuant to Schedule 73 as requested on 2/10/2017 ... The project is an energy storage QF and qualifies for the "Other projects" avoided costs as found in 1:18-cv-00236-REB (Franklin Energy Storage v. Idaho PUC & Idaho Power)."

Consequently, in light of the Federal Court's Order as well as Black Mesa's ensuing request for PURPA contracts, Idaho Power requests that the IPUC initiate a proceeding to determine the proper avoided cost rates as well as contract terms and conditions applicable to, and to be included in the PURPA contracts requested by energy storage QFs.

⁵ Case No. 1:18-cv-00236-REB, Document 62, at p 35.

II. DISCUSSION

Idaho Power has received seven requests for PURPA contracts with energy storage QFs, configured as battery storage facilities. Two such requests have been made less than one day after the Federal Court's Order. Additionally, since April of 2019 to the present, Idaho Power has received requests from multiple developers proposing solar, wind, and battery storage facilities including 615 MW of wind, 574 MW of solar, and 150 MW of battery storage. Idaho Power currently has just under 6,000 MW of wind, solar, and battery storage requests to interconnect to Idaho Power's system in Idaho for Network Resource Interconnection Service in its generator interconnection queue. Given the current requests for PURPA contracts, as well as the potential for more requests from currently developing projects, and in light of the Federal Court's Order, a proceeding establishing the proper avoided cost rate eligibility for energy storage QFs is required.⁶

Energy Storage QFs should be eligible for published avoided cost rates up to the required minimum of 100 kW pursuant to FERC regulations. 18 C.F.R. § 292.304(c).⁷ After separate lengthy and contested proceedings, the IPUC determined as part of its implementation of PURPA for the state of Idaho: (1) it will make published rates available to QFs up to the published rate eligibility cap, and that such published rates

⁶ Idaho Power has not yet determined if it will appeal the Federal Court decision, and it is unknown if the Commissioners will do so. However, any possible appeal or outcome on appeal does not obviate the need or validity of IPUC action to establish the appropriate avoided cost for energy storage QFs as requested in this Petition.

⁷ "(c) *Standard rates for purchases.* (1) There shall be put into effect (with respect to each electric utility) standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. (2) There may be put into effect standard rates for purchases from qualifying facilities with a design capacity of more than 100 kilowatts." 18 C.F.R. § 292.304(c).

are based upon a surrogate avoided resource (“SAR”) methodology;⁸ (2) QFs that exceed the published rate eligibility cap are eligible for avoided cost rates established by the incremental cost Integrated Resource Plan (“ICIRP”) methodology;⁹ (3) the published, or standard, avoided cost rate eligibility cap for wind and solar QFs is set at 100 kW, consistent with 18 C.F.R. 292.304(c), Order No. 32262; (4) the published rate eligibility cap for “other QF” generation types is set at 10 average megawatts (“aMW”) on a monthly basis; (5) QFs that are eligible for published rates may have a maximum contract term of up to 20 years; and (6) the maximum contract term for proposed QF projects that are larger than the published rate eligibility cap is two years. Order No. 33357. The Commission also previously directed that published avoided cost rates be distinguished by resource type. Order No. 32697, p. 15; Order No. 32802, pp. 5-8.

The Federal Court stated that the IPUC is “permanently enjoined from considering the energy source input into Plaintiffs’ energy storage QFs for the purpose of classifying the QFs in any way other than as energy storage QFs.” Memorandum Decision and Order, *supra*, p 37. At the same time, the Federal Court has stated that, “The Court **specifically declines** to order Defendants [the IPUC] to require utilities under their jurisdiction to afford energy storage QFs all rights and privileges afforded to “other QFs” under the IPUC’s PURPA implementation plan.” *Id.* (emphasis added). The setting of avoided cost rates and the contractual terms and conditions of purchase are the exclusive jurisdiction and responsibility of the IPUC. *Id.*, at p 35-36. Consequently, according to the Federal Court determination the IPUC must establish

⁸ SAR methodology avoided cost rates are established as the avoided cost of an assumed combined-cycle natural gas combustion turbine.

⁹ ICIRP methodology avoided cost rates are established by a comparison of the specific, hourly generation profile of the proposed QF to the displaceable resources used to serve load in the Company’s resource stack during that same hour to arrive at an avoided cost.

the proper avoided cost rate eligibility for energy storage QFs without regard to the source of generation used by the energy storage QF. However, the IPUC can properly consider the output of the energy storage QF that such QF proposes to sell to the utility. 18 C.F.R. § 292.304(c)(3)(ii). In establishing avoided costs rates for purchases from QFs the IPUC can expressly “differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies” (*Id.*), including the availability of capacity and energy during daily and seasonal peaks; dispatchability; reliability; and other factors. 18 C.F.R. § 292.304(e).

The Commission should adopt a 100 kW published rate eligibility cap for energy storage QFs for two primary reasons: (1) the ICIRP methodology based upon the QFs specific hourly generation profile is the only way to protect customers by properly considering the output, which can vary greatly, from the energy storage QF; and (2) the 100 kW published rate cap is the only effective measure to combat the potential disaggregation of energy storage QFs into 10 aMW increments in order to seek published rates over ICIRP based rates.

The output from an energy storage QF could vary greatly depending upon both the configuration and the operation of the facility. For example, current battery storage technology allows for a discharge of the batteries for differing, but limited intervals. Some are limited to four hours of discharge, or for instance, from Black Mesa’s proposal, “The project will provide scheduled, dispatchable power output in forward looking time intervals ranging from 5-240 minutes pending final system design.” As further example the output profile submitted for each of the Proposed Battery Storage Facilities generally matches the shape and timing of the generation profile of a solar

generator. See, Attachment 1-5 to the Petition for Declaratory Order, Case No IPC-E-17-01. None of the Proposed Battery Storage Facilities propose to operate in a manner that would realize the potential benefits of energy storage facilities—they simply propose to operate with substantially the same generation profile as a solar generator. The potential benefits and possible promise of economically viable, utility-scale energy storage facilities is in the unique operational characteristics to, for example: provide ancillary grid services such as reserve capacity, surge capacity, load-balancing, or voltage support; firming of variable generation; or time-shifting generation to match load. However, to realize these benefits, it would first of all be necessary for the project to be configured and operated in such a manner, and secondly it would be necessary for operational control and dispatchability of the facility to be with the utility charged with serving load. When operated as proposed by the Proposed Battery Storage Facilities, it appears to be structured in a way that passes through as many kW hours as possible in order to maximize revenue under the must-purchase provision of PURPA. This is the developer's prerogative, but it should be considered by the IPUC when determining whether such projects should be subject to a SAR avoided cost methodology, or the ICIRP avoided cost methodology. Such a determination does not consider the source of generation that charges, or is stored by the energy storage QF, but considers the output that the energy storage QF is able to make available to the purchasing utility, which is properly before the IPUC when exercising its exclusive jurisdiction and authority to determine the proper avoided cost. Any of the potential benefits of utility-scale battery storage facilities cannot be recognized when the Proposed Battery Storage Facilities are configured in such a manner as to come under published rates,

priced at the avoided cost of a natural gas combustion turbine, and standard contract terms and conditions. It would only be through the project-specific avoided cost determinations of the incremental cost IRP methodology and the negotiated rate and contract process required of proposed QFs that exceed the published rate eligibility cap where it may be possible to determine the value of proposed energy storage QFs in a manner that protects utility customers.

Lastly, energy storage QFs, particularly battery storage facilities share the modular, and easily disaggregated, nature of wind and solar generation referenced by the Commission in its orders limiting those resource types to 100 kW for published rate eligibility. Order No. 32176, Case No. GNR-E-10-04; Order No. 32262, Case No. GNR-E-11-01. For instance, the four proposed Franklin Energy Storage facilities are all located immediately adjacent to each other in a contiguous manner, with the only apparent segmentation into four increments done with the intent to disaggregate into 10 aMW sizes attempting to get 20-year published rate contracts as “other QFs.” Similarly, Black Mesa’s most recent submissions of January 21, 2020, propose two separate 20 MW facilities that are next to each other and segmented in order to attempt to get two 10 aMW published rate, 20-year contracts. The prevention of disaggregation “gaming” in order to seek application of higher rates is necessary to prevent substantial customer harm from applying and over-paying larger projects with published rates that are supposed to be applicable to smaller QFs. It is appropriate and within the exclusive authority of the Commission to act in the public interest to protect customers from manipulation of the rules and to assure that the proper avoided cost rates and contract terms and conditions are implemented for the mandatory utility purchases from QFs.

III. CONCLUSION/REQUESTED RELIEF

Idaho Power respectfully requests that the Commission initiate a proceeding to determine the appropriate avoided cost rates applicable to PURPA energy storage QFs.

Idaho Power seeks a determination from the Commission that energy storage QFs up to a maximum nameplate capacity of 100 kW are entitled to and eligible for published avoided cost rates and a 20-year maximum contract term -- and that energy storage QFs over 100 kW are entitled to and eligible for negotiated avoided cost rates determined by the incremental cost Integrated Resource Plan ("ICIRP") methodology and a maximum contract term of two years.

Idaho Power asks that the Commission issue Notice of this Petition, establish an Intervention Deadline, and set a formal Scheduling Hearing after the Intervention period at which the procedural schedule and scope of proceedings can be established.

Respectfully submitted this 21st day of January 2020.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January 2020 I will cause to be served a true and correct copy of the within and foregoing PETITION TO ESTABLISH AVOIDED COST RATES APPLICABLE TO PURPA ENERGY STORAGE QUALIFYING FACILITIES upon the following by the method indicated below, and addressed to the following:

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