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January 18, 2022

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, Oregon 97308-108

Re: UM 2226 - In the Matter of Idaho Power Company, Application for Waiver of Competitive Bidding Rules.

Attention Filing Center:

Attached for filing in the above-captioned docket is Idaho Power Company's Application for Waiver of Competitive Bidding Rules. Pursuant to OAR 860-089-0010(2)(a), this filing is being served to parties from the Company's most recent general rate case (docket UE 233), most recent request for proposal filing (docket UM 2210), and most recent IRP docket (docket LC 78). Confidential material in support of the filing will be provided to qualified parties under Protective Order No. 22-010 via encrypted zip file.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachments

cc: Dockets UE 233, UM 2210 and LC 78 Service Lists

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2226

In the Matter of

IDAHO POWER COMPANY

Application for Waiver of Competitive Bidding
Rules.

**IDAHO POWER COMPANY'S
APPLICATION FOR WAIVER OF
COMPETITIVE BIDDING RULES**

1

I. INTRODUCTION

2

Idaho Power Company ("Idaho Power" or "Company"), in accordance with OAR 860-089-0010(2), requests that the Public Utility Commission of Oregon ("Commission") waive the competitive bidding rules ("CBRs") set forth in OAR Chapter 860, Division 089 to allow the Company to procure renewable resources on behalf of a new Idaho large load customer.

6

Brisbie LLC ("Brisbie") is constructing a new enterprise data center that will be in the Company's Idaho service area. Brisbie has a sustainability objective to support 100 percent of its operations with new renewable resources. To meet Brisbie's renewables target based on its expected load, Idaho Power must add new renewable resources to its system.

10

In accordance with its Idaho tariffs,¹ Idaho Power and Brisbie have negotiated a Special Contract, or Energy Services Agreement ("ESA"), for the provision of electric service to Brisbie by Idaho Power.² Brisbie's Special Contract encompasses the pricing associated with retail electric service from Idaho Power, cost and credit components associated with new renewable resources to support Brisbie's load, and terms and conditions governing the structure of this new arrangement, including provisions that will hold other Idaho Power customers harmless. On

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¹ See I.P.U.C. No. 29, Tariff No. 101, Schedule 19 (Power Service customers that receive service in excess of 20,000 kW are required to make special contract arrangements with the Company). Available here: <https://docs.idahopower.com/pdfs/aboutus/ratesregulatory/tariffs/191.pdf>

² The ESA is provided as Confidential Exhibit No. 1 to this Application and incorporated herein by this reference.

1 December 22, 2021, Idaho Power submitted the ESA to the Idaho Public Utilities Commission
2 (“IPUC”) for approval, as required by its Idaho tariff.³ The ESA will become effective upon
3 approval by the IPUC.

4 The Brisbie ESA requires Idaho Power to procure and supply energy from renewable
5 resources to provide Brisbie with 100 percent renewable generation on an annual basis. Brisbie
6 is in turn required to pay Idaho Power the associated cost of these new renewable resources.
7 Because Brisbie will pay the cost of new renewable resources under the ESA, [REDACTED]
8 [REDACTED] other retail customers will not be impacted by
9 the selection of the resources procured on behalf of Brisbie. Therefore, Idaho Power requests a
10 waiver of the CBRs for the resource procurements that will be required to serve Brisbie in
11 accordance with the terms of its ESA.

12 **II. COMMUNICATIONS**

13 Communications and service pleadings with reference to this Application should be sent
14 to the following:

15
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³ The IPUC filing has been assigned Case No. IPC-E-21-42. The publicly available IPUC filing can be accessed here: <https://puc.idaho.gov/case/Details/6792>.

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III. BACKGROUND

A. Brisbie’s proposed facility

Brisbie plans to develop an enterprise data center that is expected to begin operations [REDACTED]
[REDACTED]
[REDACTED]

In addition to its large load service requirements, Brisbie has a sustainability objective to support 100 percent of its operations with new renewable resources. Accomplishing this sustainability target based on Brisbie’s expected load will require the addition of [REDACTED] of new renewable resources to Idaho Power’s system.⁴ The expected procurement of renewable resource capacity on behalf of Brisbie is greater than Brisbie’s anticipated load to provide a reasonable buffer to ensure that Brisbie’s full energy requirements are supported on an annual basis. As an enterprise data center, Brisbie’s energy will remain high and consistent throughout the day. In contrast, renewable resources are intermittent (e.g., solar only generates electricity during daylight hours). To reconcile this mismatch of energy service requirements and renewable generation but still achieve Brisbie’s sustainability objective, the renewable resources for Brisbie must be appropriately sized to ensure that the total renewable generation output over the year matches or slightly exceeds Brisbie’s annual energy consumption.

B. ESA Overview

Consistent with the requirements of the Company’s Idaho Schedule 19 (Large Power Service), the Company has executed a Special Contract to supply retail electric service to Brisbie. The Brisbie ESA is provided as Confidential Exhibit No. 1 to this Application.

The ESA provides for a long-term contract that becomes effective upon approval by the IPUC. Brisbie’s ESA includes the terms and conditions of retail electric service that will be

⁴ [REDACTED]

1 provided by Idaho Power. As relevant here, the ESA requires Idaho Power to procure on Brisbie's
2 behalf sufficient renewable resources to provide Brisbie with 100 percent renewable support on
3 an annual basis. Brisbie is in turn required to pay Idaho Power the costs associated with these
4 resources. To this end, the ESA includes as an exhibit a draft power purchase agreement ("PPA")
5 for procurement of renewable energy from third parties on behalf of Brisbie. The ESA also
6 includes specific cost and credit components associated with the new renewable resources that
7 will be procured to support Brisbie's load and provisions that will hold other Idaho Power
8 customers harmless for the cost of the new renewable resources.

9 The renewable resources will not serve Brisbie directly but will be procured on Brisbie's
10 behalf by Idaho Power and connected directly to the Company's transmission system. Brisbie
11 will pay for the costs associated with the incremental renewable resources required to support
12 their load and will also be credited for the value those resources bring to Idaho Power's system.
13 That is, rather than simply being charged for retail electric service under its Special Contract,
14 Brisbie will be charged for the services it requires from Idaho Power, pay for the costs of the new
15 renewable resources, and be credited for any system benefits derived from those resources that
16 will accrue to other Idaho Power customers. To this end, Brisbie's associated renewable
17 resources are incorporated into the base planning analysis of the 2021 Integrated Resource Plan
18 ("IRP") (presumed to be solar resources for purposes of this analysis). Inclusion of the
19 renewables in the IRP modeling allows them to be treated as system resources for modeling
20 purposes and enables Idaho Power to quantify their value to the Company and its broader
21 customer base.

1 **IV. LEGAL STANDARD**

2 The CBRs apply generally to resource acquisitions greater than 80 MW.⁵ However, the
3 Commission “may waive any of the Division 089 rules for good cause shown. A request for waiver
4 must be made in writing to the Commission prior to or concurrent with the initiation of a resource
5 acquisition.”⁶ The rules define a “resource acquisition” as a process for acquiring energy,
6 capacity, or storage that “starts with an electric company’s: . . . [c]ommunication of a final offer or
7 receipt of a final offer in a two-party negotiation.”⁷ Staff has “found that in evaluating whether
8 good cause is shown, it is helpful to consider how closely a procurement for which a waiver is
9 granted may still align with the goals of a competitive bidding process.”⁸

10 **V. DISCUSSION**

11 **A. Granting a waiver does not frustrate the goals of competitive bidding.**

12 The CBRs are “intended to provide an opportunity to minimize long-term energy costs and
13 risks, complement the integrated resource planning (IRP) process, and establish a fair, objective,
14 and transparent competitive bidding process, without unduly restricting electric companies from
15 acquiring new resources and negotiating mutually beneficial terms.”⁹ Here, Brisbie is a new large
16 load customer that has voluntarily agreed to pay for the acquisition of incremental renewable
17 generation in order to meet its own sustainability goals. Idaho Power has negotiated an ESA with
18 Brisbie that requires Brisbie to pay for incremental resources procured on its behalf, includes
19 robust customer protections in the event of a termination of the ESA, and effectively insulates
20 other retail customers from the costs and risks associated with the renewable generation procured
21 on behalf of Brisbie. Therefore, the Commission should waive the CBRs because the selection

⁵ OAR 860-089-0100(1)(a).

⁶ OAR 860-089-0010(2).

⁷ OAR 860-089-0020(9)(b).

⁸ *In the Matter of Portland General Electric Company, Application for Waiver of Competitive Bidding Rules*, Docket UM 2176, Order No. 21-328, App’x A at 6 (Oct. 6, 2021).

⁹ OAR 860-089-0010(1).

1 of renewable resources procured on behalf of Brisbie will not adversely impact other customers'
2 long-term energy costs and risks.

3 1. **Brisbie requires renewable energy as a condition of becoming an Idaho**
4 **Power customer.**

5 Idaho Power requests a waiver of the CBRs to allow the Company to procure the
6 renewable resources necessary to meet Brisbie's sustainability objective to support 100 percent
7 of its operations with new renewable resources. Brisbie entered into an Idaho-jurisdictional ESA
8 that obligates Idaho Power to procure sufficient renewable resources to meet Brisbie's
9 sustainability objective and dedicate the renewable generation purchased to serve Brisbie's load.
10 The execution of the ESA, including the renewable procurement provisions, is therefore critical to
11 Idaho Power's ability to serve Brisbie.

12 Idaho Power's request here is akin to the Commission's waiver of the CBRs for Portland
13 General Electric Company's ("PGE") Voluntary Renewable Energy Tariff's ("VRET") customer
14 supply option ("CSO").¹⁰ PGE's CSO allows a customer to identify a potential resource and
15 request that PGE use that resource to serve the customer in accordance with the VRET. Staff
16 supported a waiver of the CBRs for the CSO because without a waiver the "entire premise of the
17 CSO would need to be altered" because the "customer would not have a choice as to the
18 resource," which "changes the flexibility and freedom the Commission gave customers as part of
19 the program design."¹¹ So too here. Although Idaho Power is not serving Brisbie via an Oregon
20 VRET CSO, the same rationale applies—Brisbie has the "flexibility and freedom" to choose a
21 renewable energy supply option in accordance with the ESA, including the potential ability to
22 select the specific resource that will serve its renewable energy needs. Requiring a competitive
23 solicitation would frustrate Brisbie's ability to meet its identified objectives and therefore the

¹⁰ *In the Matter of Portland General Electric Company, Investigation into Proposed Green Tariff*, Docket UM 1953, Order No. 19-213 (July 20, 2019).

¹¹ Order No. 19-213, App'x A at 6.

1 Commission should waive the CBRs here just as it waived the CBRs for PGE’s CSO.

2 Similarly, even if Brisbie does not bring a specific renewable resource to Idaho Power, as
3 contemplated by PGE’s CSO, waiver of the CBRs is in the public interest. When granting a waiver
4 of the PGE-procured VRET option, Staff emphasized that the program was voluntary and
5 protected non-participating customers.¹² Here, Brisbie has voluntarily executed an ESA that will
6 meet its sustainability objectives through the direct assignment of the costs of incremental
7 renewable resources procured in accordance with the ESA. Requiring a competitive solicitation
8 will not minimize the long-term costs and risks for other retail customers because the costs and
9 risks associated with the resource procurement will be borne by Brisbie.

10 **2. Waiver will not adversely impact other retail customers.**

11 The CBRs are “intended to provide an opportunity to minimize long-term energy costs and
12 risks.”¹³ When evaluating PGE’s VRET, Staff noted that “although the procurement in the CSO
13 does not guarantee least cost/least risk planning, it does safeguard all ratepayers from risk,
14 outside of the customer who is given the freedom to choose.”¹⁴ As Staff explained, the “program
15 is designed to have ratepayers credit the subscriber only for the value of the power they receive,
16 and relies on the subscriber to act in its own self-interest to procure a PPA it desires.”¹⁵ Similarly,
17 Staff noted that the PGE-procured option also “places on subscribers all the costs of the PPA
18 supporting the program and risks associated with subscriber contract obligations.”¹⁶ The “ultimate
19 price and project selected will not change the amount non-subscribers pay.”¹⁷ Therefore, “the
20 resource choice [makes] no difference to non-participating customers.”¹⁸

21 Here, the procurement of resources pursuant to Brisbie’s ESA will not adversely impact

¹² Order No. 19-213, App’x A at 8.

¹³ OAR 860-089-0010(1).

¹⁴ Order No. 19-213, App’x A at 7.

¹⁵ Order No. 19-213, App’x A at 7.

¹⁶ Order No. 19-213, App’x A at 7.

¹⁷ Order No. 19-213, App’x A at 7.

¹⁸ Order No. 19-213, App’x A at 7.

1 other customers and therefore the choice of the resource will make no difference to non-
2 participating customers. First, the ESA includes critical security provisions that mitigate the risk
3 of stranded costs in the event of a termination of the agreement. Section 11.1 of the ESA identifies

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Second, the ESA requires Brisbie to pay the full costs of the renewable resources procured
16 to serve its load. At a high level, various cost and credit streams for Brisbie [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

¹⁹ Schedule 33 was included as Attachment 1 to the Company's Idaho Application and is available here:
<https://puc.idaho.gov/Filerroom/PublicFiles/ELEC/IPC/IPCE2142/CaseFiles/20211222Application.pdf>

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] Taken together, these provisions ensure that Brisbie assumes the costs
18 and risks associated with the renewable PPAs executed on its behalf. The ESA also ensures that
19 Brisbie will pay for a reasonable share of Idaho Power’s fixed capacity costs and energy required
20 to serve its load in excess of the generation provided by the dedicated renewable resources.

21 Fourth, the Company conducted a present value revenue requirement analysis
22 demonstrating the Brisbie ESA will not financially harm other retail customers.²⁰ Idaho Power
23 completed a present-value revenue requirement analysis for two portfolios and evaluated the

²⁰ The Company’s analysis is included here as Confidential Exhibit No. 2.

1 difference in cost as compared to revenues collected through Brisbie’s pricing framework to
2 ensure any unreasonable cost shift to existing Idaho Power customers does not occur. This “no-
3 harm” analysis demonstrates that over 10-year and 20-year periods all other Idaho Power retail
4 customers not only are not harmed but benefit with the proposed Brisbie pricing framework.
5 Although the no-harm analysis was focused on assessing the reasonableness of the pricing
6 included in the ESA (which is not the subject of this Application), the analysis also demonstrates
7 that other retail customers are not harmed by the procurement of incremental renewable
8 generation consistent with the terms and customer protections in the ESA.

9 **VI. CONCLUSION**

10 The Commission should waive the CBRs for the resource procurements that are required
11 for Idaho Power to meet its obligations under the ESA with Brisbie. Brisbie has voluntarily agreed
12 to pay for incremental renewable resources procured on its behalf and the terms of the ESA
13 insulate other Idaho Power customers from the costs and risks associated with the incremental
14 renewable resources. Therefore, a waiver does not compromise the goals of the CBRs.

15 *////*
16 *////*
17 *////*
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24 *////*
25 *////*

Respectfully submitted this 18th day of January, 2022.

McDOWELL RACKNER GIBSON PC



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Attorneys for Idaho Power Company

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 2226

In the Matter of

IDAHO POWER COMPANY
APPLICATION FOR WAIVER OF COMPETITIVE
BIDDING RULES

Exhibit 1

Brisbie Energy Services Agreement

REDACTED

January 18, 2022

**THIS EXHIBIT IS
CONFIDENTIAL
PER PROTECTIVE ORDER 22-010
AND IS PROVIDED
SEPARATELY**

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 2226

In the Matter of

IDAHO POWER COMPANY
APPLICATION FOR WAIVER OF COMPETITIVE
BIDDING RULES

Exhibit 2

Brisbie Revenue Requirement Analysis

REDACTED

January 18, 2022

**THIS EXHIBIT IS
CONFIDENTIAL
PER PROTECTIVE ORDER 22-010
AND IS PROVIDED
SEPARATELY**

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document on the parties to Dockets LC 78, UM 2210, and UE 233, Idaho Power’s previous IRP, RFP, and rate cases, on the date indicated by email addressed to said person(s) at his or her last-known address(es) indicated below.

LC 78 Service List

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DATED: January 18, 2022

/s/ Alisha Till

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