-7/6

RECEIVED
FILED
2002 MAR 13 PM 3:20

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION OF THE CONTINUED REASONABLENESS OF CURRENT SIZE LIMITATIONS FOR PURPA QF PUBLISHED RATE ELIGIBILITY (i.e., 1 MW) AND RESTRICTIONS ON CONTRACT LENGTH (i.e., 5 YEARS).	**CASE NO. GNR-E-02-01** **COMMENTS OF EMPIRE LUMBER COMPANY**

COMES NOW, Owen H. Orndorff, as the attorney for Empire Lumber Company, a Washington company ("Empire"), and submits the following comments in Case No. GNR-E-02-01.

1. **Background.** Empire is one of the diminishing numbers of North Idaho lumber operations continuing to operate. As such Empire has access to wood waste on a long-term basis necessary to fuel a bio-mass project. Empire provides jobs in Idaho to several hundred employees and indirectly creates employment opportunities for numerous other Idaho citizens in the wood products industry.

Between 1985-1990, Empire sought a Power Sales Agreement from Avista Corporation's predecessor Washington Water Power Company for 9.9 MWs as a Qualifying Facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA") located in Kamiah, Idaho, and was ultimately denied the benefit of the avoided costs prior to the rates being terminated on May 26, 1987, in Commission Order No. 21249. The Idaho Supreme Court subsequently affirmed the Commission's Order with respect to any "grandfathered" rights Empire had to a long-term contract with Washington Water Power. (See *Empire Lumber Co. v. Washington Water Power,* 114 Idaho 191, 755 P.2d 1229 (1988).) Empire eventually signed a contract with Washington Water Power in 1991 for substantially reduced rates, which ultimately proved inadequate to construct a plant. (See Commission Order No. 23984.)

If Idaho's utilities had not universally forecasted large surpluses in 2000-2001, ratepayers could have avoided significant payments for buy backs from irrigators and expensive market purchases by acquiring significantly cheaper long-term contracts with

QF resources that were available to come on line in the year 2000 timeframe. Opportunities exist today once again to provide long-term stable power supplies while providing rural Idaho industry with a chance to revitalize resource-based industries.

2. **Perfect Storm Planning.** Idaho's utilities have generally attributed the natural gas and electrical market spikes to the theory of conditions coming together to create a freak "perfect" storm. There is no assurance or ability of any market participant to guarantee another "perfect" storm will not reoccur and indeed since it happened once, there is some enhanced probability of reoccurrence.

While new QF resources may from time to time not be competitive with spot markets, QF resources are a bargain when "perfect" storm rates rise to astronomical levels of several thousand dollars a megawatt hour. Overpayment to QFs in past years which were the utility objection to purchasing QF resources versus market purchases have been significantly recovered in the 2000-2001 period. With the volatile regional electrical energy and natural gas markets, ratepayers will probably further benefit from QF long-term contracts as electrical loads rise in an improved economic environment.

3. **Continuing Efforts.** Empire has sought to obtain a long-term contract from any utility which could be the basis of financing a power plant burning wood waste, including responding to several of Avista's RFPs and making inquiries to other Idaho utilities. To date, no Idaho utility has been willing to purchase, pursuant to a long-term contract, Empire's output at prices sufficient to build a project and have instead, elected to build and purchase energy and capacity from their own captive affiliates. Even during 2000-2001, Avista declined to purchase Empire's capacity and energy notwithstanding incredibly high market prices.

4. **Comments on Contract Length and Size.** In the Notice of Investigation in Case No. GNR-E-02-01, the Commission has asked for comments on changing the size of QF projects from one (1) MW and contract length term which is now limited to five (5) years.

Without a contractual obligation to offer to purchase under PURPA as implemented by the Commission, regulated utilities have generally shown a pronounced unwillingness to purchase QF resources pursuant to long-term contracts. Indeed, the battles by QFs for even minor projects of 200 KW or less (*see Reynolds Irrigation*

District v. Idaho Power Co., Commission Order No. 19495) have been epic and the Afton wars clogged the Commission's and Idaho Supreme Court's dockets for many years before Idaho Power ultimately was required to pay the Afton QF many millions of dollars for a breach of its contract.

Empire believes that its original 9.9 MW project in Kamiah remains viable and necessary for the economy of Northern Idaho even more now than in previous years. To build a project, Empire needs a financable stream of revenue contingent only on actual production of capacity and energy, which pays debt holders and equity investors after satisfying the cost of plant operations. A ten (10) year contract, which necessarily amortizes debt over ten (10) years, requires significantly higher, unrealistic rates when compared to a twenty (20) year contract. Accordingly, the contract length for QF resources should be at least twenty (20) years so that the optimum rates for projects can be structured. Without long-term rates sufficient to amortize debt of a QF resource over a twenty (20) year period, the Commission will not stimulate new development because a prospective QF has no market for its power, which will match its loan term.

As the energy crises of 2000-2001 demonstrated, ratepayers should not have a substantial part of their resources tied to short-term market rates, but rather ratepayers should have a balanced resource portfolio that contains some fixed rate, long-term resources to hedge risks of higher natural gas and market electrical rates. Idaho and the Northwest loads continue to grow and indeed a significant part of the high prices for power in 2000-2001 came from utilities underestimating demand and over reliance on short-term market purchases.

The present Integrated Resource Planning process controlled by regulated utilities has proven to be an unreliable forecasting tool and not inclusive of the PURPA resources even in times of need. Given the control utilities have over both the Integrated Resource Planning process and discretionary selection of QF resources greater than one (1) megawatt, the present utilities' discretionary implementation of PURPA is open to significant self dealing abuses between utilities and affiliates to control the flow of information and selection of projects. If unregulated utility affiliates wish to sell merchant plant output without ratepayers underwriting the cost through committed purchases, QFs should have no qualm with such risk taking. The present utility control of the planning process and project selection of affiliates has curiously evolved into a recreation of modern day utility monopolies which PURPA sought to repeal by direct involvement of state public utility commissions to put the project selection process on a level playing field.

With respect to project size, no power plant of one (1) MW can achieve efficiencies which make development feasible based on existing rates set forth in Order No. 28758 which are based on a large natural gas plant of 230 MW. No utility will volunteer to buy any QF project of any size unless the Commission sets the size at which a mandatory offer to purchase must be made. The larger the size, the more efficient and competitive a QF will be, allowing more supply competing with rate based utility projects and favored utility affiliates seeking to build projects. Without firm rules and enforcement for when a utility must offer to purchase, the present non-selection of QF resources will indefinitely continue. A further problem arises with utility control of project selection because no QF will seek to develop a project when an Idaho utility is ultimately perceived as selecting its own project without an impartial commission evaluation process.

The size limitation of a QF should best be set by fuel type and the avoided plant. Clearly when Idaho utilities build 250 or larger MW natural gas plants, more efficient cogeneration and waste fueled plants should not per se be limited to lesser capacity limitations. The object in selecting plant size should be to capture the lowest cost resource and not to eliminate independent competition from QFs to enhance a utility's monopoly on generation resources. There is no logical reason why Idaho utilities should not be required to purchase energy and capacity from a 250 megawatt QF natural gas plant if need exists. Missing from the present utility discretionary selection process is an impartial evaluation of competing proposals that is open to a transparent public review to confirm a least cost selection.

5. **Enforcement.** The Idaho independent power development has essentially been eliminated in the aftermath of Commission Order Nos. 25882, 25883 and 25884, discouraging development of independent producers greater than 1 MW with a financially unrealistic five (5) year term. If the Commission is willing to embark on permitting independent QF projects to co-exist with regulated utility captive affiliated

projects for hundreds of megawatts, the Commission needs to have a clear, no nonsense approach to enforcing the mandatory offer to purchase with a clear warning as in the early 1980's that rate of return could be impacted by non-compliance by regulated utilities. Adopting a liberalized QF policy without "teeth" will only serve to resume in short order the "power wars" between the regulated utilities fighting to protect their turf and the independents who seek to provide independent competition.

6. **Rates and Rate Structures.** Commission Order No. 28758 distinguishes between fueled projects with rates escalating with the cost of natural gas and non-fuel projects such as hydroelectric fueled projects. While levelized natural gas fueled projects may be able to build a project based on annual escalations of gas and actual gas costs, projects such as Empire's bio-mass project cannot mirror fuel costs by matching market natural gas fluctuations. Empire could build a wood waste plant coming on line in 2005, at either the levelized twenty (20) year rate for non-fueled or the non-levelized non-fueled project under Commission Order No. 28758. In any case, the rate methodology in the original Commission Order Nos. 25882, 25883, and 25884, suffers from unrealistic low estimates of resource growth in Idaho and regionally and accordingly, needs to be updated following the shortages of 2000-2001.

Without a means to recognize a bio-mass plant burning a renewable fuel such as wood waste, the Commission has created a methodology focused only on potentially high priced natural gas fueled projects. A bio-mass wood waste plant with an adequate long-term fuel supply is more like a hydro electric project than a natural gas facility with one significant advantage over a hydro electric plant: wood waste plants do not suffer from droughts.

Accordingly, the Commission should consider modifying Commission Order No. 28758 to allow in a limited amount small power producers burning bio-mass with a long-term fuel supply to elect either (1) non-fueled levelized rates up to 10 MW, or (2) non-levelized, non-fueled rates up to 10 MW in total project size. Projects other than high fuel risk natural gas plants should be encouraged given the lessons learned from the recent perfect storm.

7. **Transmission.** Given FERC's open access transmission Orders, the Commission should make clear that any QF in Idaho (subject to available transmission) should be able to deliver power to any regulated utility in every region of Idaho.

8. **Annual Total Utility Purchases.** Each utility in Idaho has experienced in the last five (5) years significant growth. The Commission should limit QF resources and purchases from affiliated utility subsidiaries to a capped annual gross aggregate amount to avoid over purchasing in any one (1) year. Taking each utility's average five (5) year growth could be a logical limit immediately for new QF and other resources to avoid unnecessary and expensive excessive purchases in any one (1) year.

9. **Hearings.** While Empire believes the intent to avoid extensive and pain-staking hearings is commendable, the Commission probably will receive numerous utility demands for hearings requiring significant delays in any QF supply coming on line.

In the past, the Commission has responded to changed circumstances by prospectively lowering rates and changing QF purchase terms and conditions pending formal hearings as in Commission Order No. 21249 in 1987. In the present changed circumstances, Empire urges the Commission to implement new terms and conditions immediately to encourage QF resources within the existing framework as herein suggested and follow up with extensive hearings as necessary.

Respectively submitted this 13 day of March, 2002.

Owen H. Orndorff
Attorney for Empire Lumber Company

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the Comments of Empire Lumber Company to be served by first class mail, postage prepaid, on this date as shown below:

Commission Secretary
Idaho Public Utilities Commission
472 W. Washington Street
Boise, ID 83702-5983

Barton L. Kline
Senior Attorney
Idaho Power Company
P.O. Box 70
Boise, ID 83707-0070

Conley Ward
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720

William J. Nicholson
Potlatch Corporation
244 California Street, Suite 610
San Francisco, CA 94111

Robert J. Lafferty
Blair Strong
Avista Corporation
P.O. Box 3727
Spokane, WA 99220

Mark Widmer
Pacificorp
825 N.E. Multnomah, Suite 800
Portland, OR 97232

John M. Eriksson
Stoel Rives LLP
201 S. Main Street, Suite 1100
Salt Lake City, UT 84111

Respectively submitted this 13th day of March, 2002.

By: ______________________
Owen H. Orndorff
Orndorff Law Offices
1087 W. River Street, Suite 230
Boise, ID 83702
(208) 343-8880
Attorney for Empire Lumber Company