

avoided cost rates from ten (10) megawatts to thirty (30) megawatts. In support of said petition the IEPI says as follows:

BACKGROUND

The Public Utility Regulatory Policies Act of 1978 (PURPA, 16 U.S.C. § 824a) requires that investor owned utilities purchase the output from qualifying facilities. This Commission recently completed a proceeding in which it raised the size at which a QF is entitled to insist on published avoided cost rates from one megawatt to ten megawatts. (See Case No. GNR-E-02-1) while a step in the right direction, the Commission's ten-megawatt limitation on eligibility for published rates is dramatically lower than what PURPA allows. For example, there are no federal limitations on the size of a wind, solar waste or geothermal facility. 18 C.F.R § 292.204(a), and the size limitation for cogeneration facilities is eighty megawatts. Unfortunately, FERC only requires published rates be made available for QFs of up to 100 kilowatts. 18 CF.R. § 292.304(c). However, published rates may be made available for QFs of unlimited size if they are solar, wind or geothermal and up to eighty megawatts for cogeneration facilities. Therefore, this Commission has considerable legal latitude and authority in determining the size at which a QF may be eligible for published avoided cost rates. The IEPI urges the

Commission to exercise that authority by increasing the size at which a QF may insist on published avoided cost rates to thirty megawatts.

It is important to remember that the role of this Commission is to proactively encourage the QF industry in furtherance of important national policy. Indeed, in the PURPA statement of purpose congress stated that our very “national security” was furthered by its provisions, including the QF provisions which are one of the cornerstones of the act. *See* 16 U.S.C. § 2601.

Congress passed PURPA to encourage industrial and commercial cogeneration and small power production by prohibiting electric utility rate discrimination against, and providing rate benefits for, qualifying cogeneration and small power production facilities. PURPA also provides QFs with the right to connect to the electric utility grid and exempts them from rate regulation by FERC or financial regulation by state commissions. The purpose of such “favorable” treatment is to **encourage** the development of the QF industry in order to promote the national goal of energy security.

The role of the state commissions in implementing PURPA is quite broad. States are free to establish the terms and conditions of PURPA mandated purchases by electric utilities under their jurisdiction as long as those terms and conditions are within the general guidelines found in PURPA as implemented by the Federal

Energy Regulatory Commission. 45 Fed. Reg. 12,214 (1980). States may not, however, set the rates at which utilities purchase QF power at a level higher than the purchasing utility's actual avoided costs. *Connecticut Light & Power Co.* 70 F.E.R.C. (CCH) 61,012 (Jan. 11, 1995). With that one restriction in mind, this Commission then, is charged by Congress with encouraging the development of the QF industry in furtherance of a national policy to diversify our national energy portfolio away from reliance on energy sources that are subject to interruption and outside of the control of the United States.

The Courts have consistently and explicitly found that the purpose of PURPA is to *encourage* the development of cogeneration and small power production facilities:

Responding to heightened fuel costs and potential fuel shortages, Congress sought to promote conservation of oil and natural gas by electricity utilities. . . . Thus, to encourage the development of facilities that generate electricity using renewable resources and facilities engaged in cogeneration of electricity and useful heat or steam that might otherwise be wasted, . . . and to overcome the reluctance of traditional utilities to buy from, and sell to, these alternative producers, Congress granted qualifying small power production facilities certain benefits. Under PURPA, such facilities were exempt from certain regulatory controls, and they were assured a market by providing a right to interconnect with the local public utility and to receive rates, as prescribed by FERC, up to the full avoided cost of the utility.

Southern California Edison v. FERC, 195 F.3d 17, 19 (D.C. Cir. 1999).

This Commission is charged by the United States Congress with implementing PURPA in such a manner as to actually encourage the development

of the cogeneration industry. Implementing rules and policies that do not actively encourage the development of the industry is contrary to law and contrary to good public policy.

IMPACT OF CASE NO. GNR-E-02-1

This Commission is to be commended for its response to the petition by the J. R. Simplot Company to increase the size of QFs that are entitled to published avoided cost rates from 1 megawatt to ten megawatts. Unfortunately, the intended result has simply not materialized. Since that case was closed approximately five months ago, only one QF contract has been signed by any of the three investor owned utilities in Idaho and only one QF contract has been brought before this Commission for approval, and that contract is from outside Idaho. The flood of QF projects predicted by the utilities has not materialized.

The Commission correctly observed, in Order No. 29029 that:

Despite a QF history of industry reliability and an opportunity presented to utilities to diversify their resource base by adding renewables, utilities continue to regard PURPA QFs as interlopers.

Order No. 29029 at p. 5. Immediately after Order 29029 was issued, and in keeping with their institutional opposition to PURPA, the utilities asked this Commission to suspend their obligation to sign new avoided cost contracts while they could prepare for and prosecute a new case to dramatically lower the

published avoided cost rates. This Commission ordered a new hearing to consider the continued viability of the then published avoided cost rates. The IEPI wholeheartedly endorses the Commission's finding in the order opening the avoided cost rate case to the effect that, *if the rates are no longer fair and accurate, the appropriate response is to adjust the rates, not to limit the size of the QFs eligible for the rates.* Order No. 29069 at p. 7. The obvious rationale for such a decision is that if the avoided cost rates are accurate, then the utility and its ratepayers are indifferent (only as to cost) whether the new resource is purchased from a QF or built by the utility itself.

Of course the ratepayers are NOT indifferent as to the other tangible benefits of requiring the utilities to purchase from QFs. As the Commission already noted, there are benefits from reliability and diversity. Of course there are many other benefits, both great and small, such as helping to further the national policy of energy independence (after all, the avoided cost unit is *gas* fired) and reducing green house gas emissions, to bolstering the local tax base and providing jobs in Idaho's cities and counties. In addition to the benefit of diversity of generation sources, there is the added benefit of providing a distributed generation load, making the transmission system more reliable and efficient.

ECONOMIES OF SCALE NOT REALIZED

One of the central reasons this Commission increased the entitlement ceiling to 10 megawatts was that:

The Commission also agrees that economies of scale can be achieved by larger QF facilities and that a larger eligibility size will encourage development of alternative energy projects, such as geothermal, wind and biomass. Accordingly, the petitions of Simplot and Earth Power are granted for the purpose of increasing the size of the QFs eligible for published rates from 5 MW to 10 MW.

Order No. 29069 at p. 7.

Since the Commission issued that order it subsequently reduced the avoided cost rates by a substantial amount. With the lower rates, the issue of economies of scale has become critical. The entire industry is struggling to develop projects within the ten-megawatt limitation at the new reduced published rates. It is simply not working. The renewable sectors of the QF industry – wind, geothermal and biomass in particular are finding it next to impossible to develop generation projects with the ten-megawatt limitation placed over their projects.

The Commission assumed that its goal of encouraging the development of a diverse energy portfolio for its regulated investor owned would be furthered with at least some additional QF power.

Order No. 29069 at page 7. The QF industry is unable to achieve sufficient economies of scale at 10 megawatts to make the Commission's prediction come

true. For instance, the SAR is based on a GE Frame 7FA (1x1) configuration with a 230 MW plant size. Compared to the 10 MW QF, this is a scale up multiple of 23 times. The economies of scale achievable by the SAR dwarf whatever a QF, no matter how efficient, can achieve with a mere 10 MW plant. Increasing the size to 30 MW is still a decided disadvantage to the QF, but with a more reasonable scale up multiple of 7.7, the Commission may actually be able to realize its goal for some new QF power to come on line in Idaho. This huge size disparity disadvantages the QF industry in many ways because all of the costs of construction, operation and maintenance of a QF are proportionately much larger than for the SAR. Since the SAR is *the avoided cost* the QF industry is not encouraged, indeed with the 10 MW limit it is actively discouraged given the current avoided cost rates

NO NEGATIVE IMPACTS ON UTILITY SYSTEMS

The different effects a 30 MW QF has on a utility's *electrical system* versus a QF 10 MW in size are inconsequential. More importantly, the effects any particular QF has on the host utility's electrical system are unique. Each QF will have different effects depending on many factors other than size. The proximity of the QF to transmission, distribution, substations and the utility's load are all-important, but unique factors that impact the utility's system. In addition, before a

QF may connect to the system, a detailed interconnection study is conducted by the utility (and paid for by the QF) to insure there are no detrimental impacts caused by the proposed project. If there are effects that are detrimental, then the QF must pay for corrective measures or it will simply not be connected.

IMPACT OF RECORD HIGH NATURAL GAS PRICES

Natural gas has now moved from the supply status of a just-in-time commodity to a commodity that is actually in deficit. It is projected to remain in deficit status for the foreseeable future. As a result prices have recently hovered near all time highs. Now is the time, as a matter of sound public policy, for the Commission to do all in its power to encourage the wisest use of energy resources. This petition of the IEPI gives the Commission one more tool to accomplish that goal by increasing the threshold at which a QF is entitled to published avoided cost rates from 10 MW to 30 MW.

PRAYER FOR RELIEF

Wherefore the IEPI respectfully requests that the Commission initiate a proceeding, preferably on modified procedure, with the goal of raising the threshold at which a QF is eligible for published rates from 10 MW to 30 MW.

Furthermore, should the Commission desire an evidentiary hearing or additional information upon which to make its decision, the IEPI stands ready to go to hearing or make whatever additional filings the Commission desires.

DATED this 6TH day of March, 2003.

Richardson & O'Leary P.L.L.C.

By 
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CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of March 2003, served the foregoing PETITION OF THE INDEPENDENT ENERGY PRODUCERS OF IDAHO, in Case No. GNR-E-02-___, by personal service on:

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