

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE PETITION OF THE)
INDEPENDENT ENERGY PRODUCERS OF)
IDAHO FOR AN ORDER INCREASING THE)
SIZE AT WHICH A QF IS ENTITLED TO)
PUBLISHED AVOIDED COST RATES.)
_____)**

CASE NO. GNR-E-03-1

ORDER NO. 29241

On March 6, 2003, the Independent Energy Producers of Idaho (IEPI) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting that the Commission increase from 10 MW to 30 MW the size at which a qualifying cogeneration or small power production facility (QF) is entitled to published avoided cost rates. Reference Public Utility Regulatory Policies Act of 1978 (PURPA).

The Federal Energy Regulatory Commission (FERC) requires only that published rates be made available to QFs with a design capacity of 100 kW or less. 18 C.F.R. § 292.304(c)(1). In recent Case No. GNR-E-02-1, the Commission increased the size at which a QF is eligible to receive published avoided cost rates from 1 MW to 10 MW. Order No. 29069, July 2, 2002. Under PURPA there are no limitations on the size of eligible wind, solar, waste or geothermal facilities; the size limitation for eligible cogeneration facilities is 80 MW. 18 C.F.R. § 292.204(a); § 292.203.

On March 28, 2003, the Commission in final Order No. 29216 denied the Petition filed by IEPI. In our Order we stated

We continue to find the established avoided cost and contract methodology to be reasonable and find that IEPI in its Petition presents no persuasive argument for revisiting the QF eligibility capacity limit for published avoided cost rates.

Order No. 29216 at p. 3.

A separate dissent was filed by Commissioner Smith.

Petitions for Reconsideration of Order No. 29216 were filed by US Geothermal, Inc. and Vulcan Power Company. US Geothermal, Inc. contends that an increase in QF size (from 10 MW to 30-50MW) is important to the development of renewable energy resources in Idaho and would have a positive effect on PURPA project economics, especially for the development of

renewable energy such as geothermal and wind. US Geothermal is working on the development of the Raft River geothermal field in Cassia County and requests a formal public proceeding to reconsider the Commission's Order. US Geothermal contends that denying IEPI's Petition without holding a public proceeding to gather and consider information from other parties is unreasonable and inconsistent with the best interests of power consumers and stakeholders of the state of Idaho.

Vulcan Power Company does not dispute the legality of a contracting procedure that requires individual negotiation of contracts for QFs larger than 10 MW but does dispute the practicality and actual results of such a process. Traditional utility negotiations, Vulcan contends, have not been productive. Vulcan states that it has shared the frustration of other independent energy producers in attempting to conduct "good faith" contract negotiations with Idaho electric utilities. While noting that FERC requires only that published rates be made available to QFs with a design capacity of 100 kW or less, Vulcan notes that FERC does not preclude the posting of rates for facilities greater than 100 kW. The key factor that gives significance to the actual megawatt size of QFs, Vulcan contends, is whether the QF size leads to the actions desired by the stated goals of the Commission. The 10 MW size for posted rates, Vulcan contends, is insufficient to trigger additional QF development. Vulcan contends that the QF eligibility threshold should be increased from 10 MW to 30 MW. If sufficient steps are not taken by the Commission to encourage the diversification of resources that QF development provides, Vulcan contends that the parties will likely be back in a proceeding to increase the avoided cost rates. In support of its Petition, Vulcan cites deteriorating hydro and natural gas supply conditions.

On April 24, 2003, Idaho Power Company filed Answers to the Reconsideration Petitions of Vulcan Power Company and US Geothermal, Inc. Idaho Power contends, as recognized by the Commission in prior Orders, that large QF projects are more likely to have unique characteristics that require that a purchase arrangement be individually negotiated. Idaho Power's disagreement with Vulcan's Petition, it states, arises out of Vulcan's failure to apprise the Commission that Vulcan has had no discussions with Idaho Power for several years. Idaho Power believes that it is unreasonable for Vulcan to claim that the Commission's long-standing policy of requiring the developers of large QF projects to negotiate project-specific contracts is a failure when Vulcan has made no credible effort to comply with the policy. Negotiations

between utilities and QFs may not ultimately lead to contracts, the Company contends. But that result, Idaho Power argues, does not necessarily indicate a failure of the policy of requiring negotiations. Idaho Power notes also that US Geothermal, in its discussions with the Company, has never asked to negotiate a QF contract for other than a size qualifying for posted rates.

Idaho Power notes that electric utilities are required by Commission Order to negotiate with QFs in good faith to develop a purchase price that is equivalent to the contracting utility's avoided cost. It is unfair, Idaho Power contends, to prejudge the negotiation process and assume that utilities will act in bad faith.

COMMISSION FINDINGS

The Commission has reviewed the filings of record in Case No. GNR-E-03-1, including our final Order No. 29216. We have also reviewed and considered the Petitions for Reconsideration filed by US Geothermal, Inc. and Vulcan Power Company and the related Answers to the Petitions filed by Idaho Power Company.

Petitioners contend that the QF eligibility size for published avoided cost rates must be increased if the Commission wants to promote the diversification of resources and renewable energy such as geothermal and wind. The Petitioners contend that projects larger than 10 MW are not being developed because posted rates are not available to them. Neither Petitioner, it seems, has attempted to secure a purchase contract for a facility larger than the size eligible for posted rates. This Commission requires good faith contract negotiation from both utilities and QFs. We cannot support a large QF's failure to initiate negotiations for a project-specific contract and avoided cost rate because it presumes the utility will not negotiate in good faith. Should a utility fail to negotiate in good faith with a qualified QF, a complaint can be filed with this Commission. We find that Petitioners have failed to demonstrate that a change in posted rate eligibility is needed or that the established avoided cost methodology and contract negotiation requirement for large QFs is unworkable. The avoided cost methodology for projects larger than 10 megawatts is the Integrated Resource Plan (IRP) based methodology approved in Case No. IPC-E-95-9, Order No. 26576, not the Surrogate Avoided Resource (SAR) based methodology used to calculate posted rates.

The Commission is convinced that if operating efficiencies and economies of scale are to be realized by projects greater than 10 MW that those projects will be developed and that the contract negotiation requirement for large QFs will not present an insurmountable hurdle.

The caveat of course is that the purchase price is the electric utility's avoided cost and not the QF project viability cost. The Commission finds the arguments raised by Petitioners to be unpersuasive and finds it reasonable to deny the Petitions for Reconsideration.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over the Petition filed in Case No. GNR-E-03-1 by IEPI pursuant to the authority and power granted it under Title 61 of the Idaho Code, and the Public Regulatory Policies Act of 1978 (PURPA).

The Commission has authority under PURPA and 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 cogeneration and small power production facilities, and to implement FERC rules.

ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby deny the Petitions for Reconsideration filed by US Geothermal, Inc. and Vulcan Power Company in Case No. GNR-E-03-1.

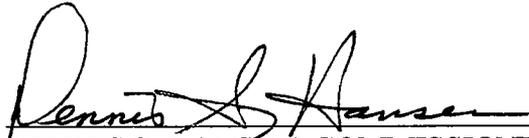
THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. GNR-E-03-1 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14th
day of May 2003.



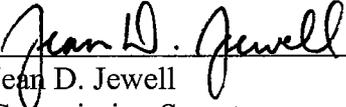
PAUL KJELLANDER, PRESIDENT

Commissioner Smith Adopts Prior Dissent
MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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