

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

FROM: SCOTT WOODBURY

DATE: MAY 7, 2003

**RE: CASE NO. GNR-E-03-1
IEPI PETITION TO INCREASE QF ELIGIBILITY SIZE FOR
PUBLISHED RATES
ORDER NO. 29216-PETITIONS FOR RECONSIDERATION**

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 Order No. 29216 denied the Petition filed by IEPI. 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. Petitioner 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 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 designed 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, that large QF projects are more likely to have unique characteristics that require that a purchase arrangement be specifically tailored to their situation. Accommodating those unique characteristics, the Company states, requires that both the utility and the QF acknowledge those characteristics and tailor the agreement to ensure that the utility's customers are not disadvantaged by the QF purchase. Idaho Power's disagreement with Vulcan's Petition 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, 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 in good faith on purchase prices that are equivalent to the utilities' avoided cost. It is unfair, Idaho Power contends, to prejudge the negotiation process and assume that utilities will act in bad faith.

Commission Decision

The Commission decision deadline on the Petitions for Reconsideration is May 15. Does the Commission find the Petitions filed by US Geothermal, Inc. and Vulcan Power Company to be persuasive? Should reconsideration be granted or denied?

Scott Woodbury

Vld/M:GNRE0301_sw2