Office of the Secretary
Service Date
May 28, 2010

# BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| **IN THE MATTER OF THE ADJUSTMENT OF AVOIDED COST RATES FOR NEW PURPA CONTRACTS FOR AVISTA CORPORATION DBA AVISTA UTILITIES, IDAHO POWER COMPANY, AND PACIFICORP DBA ROCKY MOUNTAIN POWER** | ) | **CASE NO. GNR-E-10-01** |
| | ) | **ORDER NO. 31092** |

On March 16, 2010, the Commission issued final Order No. 31025 in Case No. GNR-E-10-01 approving a revised and updated calculation of the published avoided cost rates for Avista Corporation dba Avista Utilities, Idaho Power Company, and PacifiCorp dba Rocky Mountain Power. In our final Order we stated:

> Presented in this case for Commission approval are revised published avoided cost rates incorporating the [Northwest Power and Conservation] Council's March 8, 2010 medium natural gas price forecast. The methodology for calculation of avoided cost rates was established in Case No. GNR-E-02-01, Order No. 29124. We find that the method for revising the fuel cost adjustment to published avoided cost rates is a simple arithmetic calculation. We find that the Council's new natural gas price forecast was approved on March 2, 2010, and posted on the Council's website on March 8, 2010. Sixth Power Plan, Appendix A. We find that the change in avoided cost rates depicted in Attachments 2-4 to this Order accurately incorporate the Council's revised natural gas price forecast and are consistent with the Commission-approved SAR methodology. We find it reasonable to issue an Order implementing new published avoided cost rates without further notice or procedure.

Order No. 31025 at 2.

On April 6, 2010, Windland, Inc. (Windland) and AgPower Jerome, LLC (AgPower) (collectively Petitioners) filed a Petition for Reconsideration of Order No. 31025. *Idaho Code* § 61-626; IDAPA 31.01.01.331. An Answer to the Petition for Reconsideration was filed by PacifiCorp on April 13, 2010. A reply to PacifiCorp's Answer was filed by Petitioners on April 15, 2010.

On April 21, 2010, the Commission granted limited reconsideration and established a filing schedule for Petitioners' comments regarding the calculation of the fuel cost related adjustment to published avoided cost rates. Order No. 31057 *citing Idaho Code* § 61-626(2).

On April 28, 2010, Windland, Inc. and AgPower Jerome, LLC filed comments on the Commission's Order No. 31057 granting "limited reconsideration." Petitioners provided no comment regarding the accuracy of the revised and updated calculation or whether the approved methodology was correctly implemented. Finding no reason to change what we have determined to be an administrative and ministerial revision in updating the published avoided cost rates pursuant to a previously approved methodology, the Commission in this Order reaffirms the published rates of Order No. 31025.

## BACKGROUND

### *A. PURPA*

Out of the nationwide energy crisis of the late 1970s, Congress enacted the Public Utility Regulatory Policies Act of 1978 (PURPA). Sections 201 and 210 of PURPA require electric utilities to purchase power produced by co-generators or small power producers that obtain qualifying facility (QF) status. Under PURPA Section 210(b), the rate to be paid for such power is not to exceed "the incremental cost to the utility of alternative electric energy." 16 U.S.C. § 824a-3(b), (d). *See generally, Rosebud Enterprises v. Idaho Public Utilities Commission*, 128 Idaho 609, 917 P.2d 766 (1996).

Pursuant to Congressional directive, the Federal Energy Regulatory Commission (FERC) promulgated regulations implementing Sections 201 and 210 of PURPA. Under FERC regulations, the utility requirement to purchase power from QFs is set out in 18 C.F.R. § 292.303(a). The rate a qualifying facility is to receive for the sale of its power is generally referred to as the "avoided cost" rate – the incremental cost to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility, such utility would generate itself or purchase from another source. 18 C.F.R. § 292.101(b)(6). PURPA Section 210(b) and related FERC regulations provide that the rates for QF purchases shall: (1) be just and reasonable to the electric consumers of the electric utility and in the public interest; and (2) not discriminate against qualifying co-generators or small power producers. 18 C.F.R. § 292.304(a)(1)(i), (ii).

There are two general caveats under PURPA: (1) electric utilities are not required to pay more than the utility's avoided costs for purchases of QF capacity and energy (PURPA Section 210(b), 18 C.F.R. § 292.304(a)(2)); and (2) co-generators and small power producers in their sales to utilities are not to be subjected to pervasive utility type regulations, i.e., regulation

respecting (i) the rates of electric utilities and (ii) the financial and organizational regulation of electric utilities. PURPA Section 210(e); 18 C.F.R. § 292.602(c)(1)(i)(ii).

In implementing PURPA, the Idaho Commission has developed a body of regulatory decisions in generic ratesetting and complaint actions since 1980 that set out the general principles and framework under which Idaho electric utilities are to purchase power from qualifying facilities. *Rosebud*, 128 Idaho at 615, 917 P.2d at 772.

### *B. The Current Avoided Cost Methodology*

The current administrative Surrogate Avoidable Resource (SAR) methodology for calculating the published avoided cost rates for QFs smaller than 10 aMW is based on a surrogate (hypothetical) natural gas-fired combined-cycle combustion turbine. Case No. GNR-E-02-01, Order No. 29124 (September 26, 2002). One of the key input variables in the computation of avoided cost rates under this methodology is a long-term natural gas price forecast; i.e., the "medium" natural gas price forecast developed by the Northwest Power and Conservation Council (NPCC; Council). Order No. 29124 at 10.

In our 2002 Order approving the present methodology, we noted recent volatility extremes in gas prices, acknowledged that gas prices had returned to more normal levels and expressed concern that our failure to adjust published avoided cost rates to reflect the lower gas costs could result in unreasonable and unfair high costs being borne by the regulated utility; costs that would ultimately be paid by utility ratepayers. Order No. 29124 at 4.[1]

The Commission considered many proposals for indexing and adjusting natural gas prices and in the end adopted the "medium" fuel price forecast prepared by the Council along with the method for establishing the starting year gas price and escalation rate proposed by the Idaho Independent Energy Producers (IIEP), an intervenor in that case.

In doing so, we stated:

> [w]e express confidence in the source and the use of a medium forecast which we believe has the highest probability of being right. We acknowledge that the Power Council does not issue its forecast on a regular basis. This will preclude a regular updating of the fuel price. Natural gas prices can be updated when a new NWPPC forecast becomes available. A proceeding to review . . . the starting gas price can also be initiated at any time by the Commission on its own motion or by petition of any utility or QF.

[1] In particular, the Order stated that the "Commission cannot expose ratepayers to avoided cost rates that rely too heavily on uncharacteristically high [natural] gas prices in combination with a high escalation rate." *Id.*

Order No. 29124 at 10-11.

Based on subsequent changes in the natural gas price forecasts issued by the Council, the Commission, pursuant to the established SAR methodology, issued Orders revising and updating the calculation of published avoided cost rates: Order No. 29391 (December 5, 2003 – gas price change); Order No. 29646 (December 1, 2004 – gas price change and Idaho Power and Avista cost of capital changes); and Order No. 30744 (March 12, 2009 – gas price changes; Idaho Power cost of capital changes; changes to non-fuel variables).

### *C. The 2009 Avoided Cost Order*

In our 2009 Order No. 30744, we increased published avoided cost rates incorporating the Council's December 29, 2008 medium case (East-Side Delivered) natural gas price forecast (draft fuel prices for the Sixth Power Plan). In the case, PacifiCorp contended that use of the Council's medium natural gas price curves resulted in avoided cost prices that were too high and recommended that there be no change in the published rate until the Council's draft fuel prices became final. We denied the relief requested by PacifiCorp. The Commission found that under the current avoided cost methodology "rates are changed when the Council issues a new gas price forecast." Order No. 30744 at 3 (emphasis added). We reiterated that the change in natural gas prices resulted in changes in avoided cost rates [which are] a simple arithmetic calculation. *Id.* at 3-4 (emphasis added).

In our Order No. 30744, we took notice of the draft nature of the Council's planning assumptions and fuel forecast and expressed confidence that the numbers and values would be used by the Council in its Sixth Power Plan. In doing so, we stated "[h]owever, should the numbers and values change appreciably in the Council's final Sixth Power Plan document we will adjust the rates accordingly for prospective QF contracts." Order No. 30744 at 4. Again, a change in the fuel gas forecast would cause the avoided cost rates to change. Calculating new rates, we stated, "is a simple arithmetic calculation." *Id.*

### *D. Order No. 31025*

In September 2009, the Council issued and solicited public comments on its draft Sixth Northwest Power Plan (Sixth Plan). On February 10, 2010, the Council approved a new natural gas price forecast in conjunction with the Council's approval of its Sixth Plan. The approved fuel forecast was posted on the Council's website on March 8, 2010. Commission Staff recalculated avoided cost rates using the approved SAR methodology and the Council's

March 8 gas price forecast. Staff provided its calculations to the utilities by letter dated March 9, 2010. The letter was filed with the Commission on March 9, 2010. A case docket was opened under Case No. GNR-E-10-01 on the same date and was posted to the Commission's web site.

On March 15, 2010, the Commission by Motion and unanimous approval amended the March 15 decision agenda to add consideration of the proposed fuel cost adjustment to published avoided cost rates. *Idaho Code* § 67-2343(4). The Commission routinely places items on its decision agenda so that parties and interested persons are advised that the Commission is processing a case. Adjusting the avoided cost rates was an administrative action. In accordance with the Commission-approved methodology, the Commission issued Order No. 31025 on March 16, 2010, implementing new (and lower) published avoided cost rates. Given the nature of the published avoided cost rate as defined by PURPA and FERC and the fact that the simple arithmetic recalculation was executed pursuant to a Commission-approved methodology, we found it reasonable to publish the revised and updated calculation "without further notice or procedure."

The appreciable decrease in the gas price forecast included in the Council's final Sixth Power Plan precipitated our recalculation and reduction of the avoided cost rates in Order No. 31025. It is from this Order that Petitioners seek relief.

**PETITION FOR RECONSIDERATION**

Petitioners, Windland and AgPower, contend that issuing Order No. 31025 changing published avoided cost rates "without notice or further procedure" violated their "statutory and constitutional rights to notice and opportunity to be heard." Petitioners contend that the published avoided cost rates established in Order No. 30744 are a government-created, statutory entitlement and that QFs pursuing the published rates have an entitlement to those rates protected by the Due Process Clause. *Citing Idaho Code* § 61-307 (Schedules – Change in Rate and Service); Article I, § 13 of the Idaho Constitution and the 14th Amendment of the United States Constitution (the right to procedural due process of law). Petition at 7, 10-12.

Petitioners contend that each were engaged in developing PURPA projects and in perfecting eligibility for power contracts at the published rates and interconnection for their respective projects. They also assert they made financial expenditures in reliance on the higher published rates set forth in Order No. 30744. *Id.* at 3-4.

Had the Commission provided Windland and AgPower with an opportunity to review Staff's calculations and to comment on what they allege was a significant reduction in avoided cost rates, Petitioners state they may have advocated for additional changes to the SAR methodology. Petition at 10. These changes, Petitioners opine, may have included alterations to carry forth what they contend is PURPA's objective, i.e., to promote renewable energy development. Petitioners requested that the Commission delay the effective date of Order No. 31025 pending hearing and final Order on Reconsideration. *Id.* at 2.

In its Answer, PacifiCorp requested that the Commission deny the Petition for Reconsideration contending that the Commission's Order No. 31025 violates neither *Idaho Code* § 61-307 nor the procedural due process clauses of the Idaho or United States Constitutions. Should reconsideration be granted, PacifiCorp requests that the avoided cost rates adopted in Order No. 31025 remain in effect unless and until found to be unjust or unreasonable.

### *A. Order No. 31057 – Granting "Limited Reconsideration"*

On April 21, 2010, the Commission issued Order No. 31057 granting limited reconsideration and established a filing schedule for Petitioners' comments regarding the calculation of the fuel cost related adjustment to published avoided cost rates. *Idaho Code* § 61-626(2).

We acknowledged in Order No. 31057 that the change in published avoided cost rates of Order No. 31025 was triggered by a new fuel price forecast issued by the Northwest Power and Conservation Council. The avoided cost methodology did not change and the adjustment of the rates was a simple arithmetic calculation. Order No. 31057 at 6. As noted in Order No. 30744, the fuel cost component of avoided cost rates is to be updated when the Council or the Council's general advisory committee issues a new gas price forecast. Order No. 30744 at 1. The change in published rates, we noted, is an implementation of an approved methodology and is not an opportunity to revise the methodology. We noted that there is a separate and open docket for review of the SAR methodology in Case No. GNR-E-09-03.

Recognizing that Petitioners were contending that they did not have an opportunity to review the calculations revising the published avoided cost rates or to provide comment on them, we granted limited reconsideration to allow Petitioners the opportunity to file written comments on whether the avoided cost rates were correctly calculated and whether the approved

methodology was correctly implemented. Order No. 31057 at 7. It was not, we stated, an opportunity to comment on the methodology or to propose changes to the methodology. *Id.* at 6.

We also recognized in Order No. 31057 that there are economic consequences to QF developers in a downward adjustment to rates. We stated that this case is not the forum, however, to present such information, nor is such information relevant in determining the timing of a decrease in rates, a rate we note that is ultimately paid by utility customers. A delay in changing avoided cost rates, we noted, ultimately means that ratepayers are saddled with rates that are too high and therefore unreasonable. Order No. 31057 at 6 *citing* PURPA § 210(b); *Idaho Code* § 61-622.

In our Order we made the following further findings:

> Petitioners contend that the manner in which the published avoided cost rates were changed resulted in a denial of due process in contradiction of statutes, rules and constitutional rights. We find the revision and recalculation of the published avoided cost rates in this case to be an administrative and ministerial act. As set out in the Attachment, the calculation of new avoided cost rates is a simple process. We further find that no violation of notice or due process has occurred and that no cure is necessary. We find Petitioners' arguments to the contrary to be unpersuasive and without merit. The existing SAR methodology for calculating avoided cost rates was a result of a fully litigated prior proceeding. It is well established that a utility cannot be required to pay more for QF power than its avoided cost. Under the approved methodology, with a posting of a new gas forecast, the variable component of the avoided cost rates changes. A downward adjustment of the gas forecast results in a lower avoided cost. Our explicit findings in Order No. 31025 can be read in no other way than but an implicit finding of "for good cause shown." Reference *Idaho Code* § 61-307.

Order No. 31057 at 6-7.

The Commission also observed that the Petitioners had filed complaints alleging that they should be entitled to the former (and the higher) published rates of Order No. 30744. AgPower (Case No. IPC-E-10-11) and Windland (Case No. PAC-E-10-05). This docket, we stated, is not a forum to pursue those claims, rather Petitioners will have an opportunity to pursue those claims in the other dockets. Order No. 31057 at 7.

### *B. Petitioners' Comments*

On April 28, 2010, Petitioners filed their response to the Commission's Order granting limited reconsideration. No comment was provided regarding the accuracy of the

published avoided cost rates set forth in Commission Order No. 31025 or failure, if any, to follow the approved methodology.

Instead, Petitioners renew the allegations set forth in their Petition for Reconsideration and make additional arguments regarding the sufficiency of the notice provided. Notice, Petitioners contend, means more than just being provided an opportunity to comment on a proposed rate. Notice is necessary, Petitioners contend, so that parties can put their affairs in order and seek to finalize preparations for a new QF project in order to obtain the existing higher rate before it is reduced.

Petitioners contend that the recalculation procedure followed for increases and decreases to rates under the approved methodology is non-symmetrical and therefore constitutes discriminatory ratemaking. 18 C.F.R. § 292.304(a)(1)(ii).

Petitioners renew their contention that the Idaho Supreme Court in *A.W. Brown*, 121 Idaho 812, 828 P.2d 841 (1992), explicitly ruled that the notice provisions of *Idaho Code* § 61-307 applied to changes in avoided costs. The fact that this Commission believes that a rate change is reasonable, Petitioners contend, is not sufficient "good cause" to eliminate the notice requirement of 61-307.

Petitioners renew their request to declare Order No. 31025 null and void and recommend that the rates of Order No. 30744 be reinstated.

## COMMISSION DISCUSSION AND FINDINGS

The Commission has reviewed and considered the filings of record in this case including final Order No. 31025, Order No. 31057 granting limited reconsideration, and Petitioners' comments. Following the filing of Petitioners' comments the Commission scheduled and posted this matter on its May 3, 2010 decision meeting agenda, the date for purposes of final Order that we find the Petition to be finally submitted for reconsideration. *Idaho Code* § 61-626(2).

We have reviewed PURPA Sections 201 and 210 and the implementing regulations of FERC, and related decisions of the Idaho Supreme Court. We have reviewed our authority pursuant to Idaho Code, Title 61, and our Rules of Procedure, IDAPA 31.01.01.000 *et seq*. We have also reviewed the current SAR methodology approved initially in Order No. 29124 and our subsequent Orders approving fuel cost adjustments pursuant to that methodology.

### *A. The Avoided Cost Recalculation*

We begin our findings by examining the avoided cost rates established in final Order No. 31025. In our Order No. 31057 granting limited reconsideration, we provided Petitioners the opportunity to file comments regarding the calculation of the fuel cost related adjustment to published avoided cost rates and whether the avoided cost methodology was correctly implemented. Petitioners in their comments on reconsideration did not address the calculation of the fuel cost related adjustment or whether the avoided cost methodology was correctly implemented. Accordingly, we find no evidence that the avoided cost rates published in Order No. 31025 were inaccurate or that our SAR avoided cost methodology was incorrectly implemented.

### *B. Notice*

1. Actual Notice. We now turn to Petitioners' contention that they had no notice and were entitled to notice of the change in the published avoided cost rates. We find the Petitioners are mistaken on both counts. First, a brief review of how the Commission has implemented the avoided cost methodology is helpful. In September 2002, the Commission established the current avoided cost methodology in Order No. 29124. In that Order, we adopted the natural gas forecast developed by the Northwest Power and Conservation Council in its draft Fifth Power Plan. Order No. 29124 at 10. We observed that because the Council "does not issue its [natural gas] forecast on a regular basis [, this] will preclude a regular updating of the fuel price." *Id.* We further stated that "[n]atural gas prices can be updated when a new [Council] forecast becomes available." A proceeding to review the gas price "can also be initiated at any time by the Commission on its own motion or petition of any utility or QF." *Id.* at 10-11.

In March 2009, the Commission adopted a new gas forecast issued by the Council's general advisory committee in late December 2008. In Order No. 30744, we observed that the "Commission-approved avoided cost methodology (Order No. 29124) natural gas prices are to be updated when a new forecast becomes available from the Council or the Council's general advisory committees." Order No. 30744 at 1. The Order also states that the proposed avoided cost rates "are made in accordance with existing Commission Orders and approved methodology. The resultant change in avoided cost rates is a simple arithmetic calculation." *Id.* at 2 (emphasis added).

Although PacifiCorp challenged the 2009 increase in the avoided cost rate, the Commission found that under the "present methodology [avoided cost] rates are changed when the Council issues a new gas price forecast. The calculation of the fuel cost adjustment to published avoided cost rates is arithmetic." *Id.* at 3; 4. The Commission also reaffirmed its intent to update the gas forecast. In particular, the Commission recited that

> We take notice of the draft nature of the Council's planning assumptions and fuel forecast and have reasonable confidence that the numbers and values will be used by the Council in its Sixth Power Plan. However, should the numbers and values change appreciably in the Council's final Sixth Power Plan document we will adjust rates accordingly for prospective QF contracts.

Order No. 30744 at 4 (emphasis added).

In final Order No. 31025 in the present case, we described the Council's recent change in its natural gas forecast as "automatically trigger[ing] a recalculation of the published avoided cost rates." Order No. 31025 at 1. Updating the avoided cost rates "is a simple arithmetic calculation." *Id.* The Commission further found it was reasonable to change the avoided cost rates "without further notice or procedure." *Id.*

In their Petition, Windland and AgPower maintained that they had no notice of the Commission's intent to change the published avoided cost rates. More specifically, they indicate that they relied upon "the published avoided cost rates on file pursuant to Order No. 30744." Petition at 2. However, as emphasized above, it was well established that the Commission would change the avoided cost rates when the Council issued a new gas forecast. Order No. 30744 at 3. Order No. 30744 also states that the Commission will adjust the avoided cost rates if the Council changed the rates in its final Sixth Power Plan. *Id.* at 4. The Petitioners concede that they were aware of Order No. 30744 and relied upon it. Consequently, we find that the Petitioners had notice that the Commission "will change avoided cost rates" if the Council changes its forecast in the final Sixth Plan.

The Petitioners' next contend that they were entitled to particular notice of the change in rates on various grounds. We address these arguments in greater detail below.

2. Opening the Docket. Petitioners argue that the Commission did not post Staff's March 9, 2010 letter opening this docket until after Order No. 31025 was issued on March 16, 2010. Petition at 4. The Petitioners are wrong. As indicated on our web site, the Staff letter was posted and the case opened on March 9, 2010, – the date of Staff's letter.

www.puc.idaho.gov/internet/cases/summary/GNRE1001.html. Moreover, Windland and counsel for both Petitioners concede they received a copy of Staff's letter the next day (March 10, 2010). Petition at 5; Reply to PacifiCorp's Answer at 6.

3. Section 61-307. The Petitioners next assert that avoided cost rates may not be changed without 30 days' notice pursuant to *Idaho Code* § 61-307. Comments at 3. Petitioners have misconstrued *Idaho Code* § 61-307. In pertinent part, this statute provides

> Unless the commission otherwise orders, no change shall be made by any public utility in any rate . . . except after thirty (30) days' notice to the commission and to the public as herein provided. . . . The commission, for good cause shown, may allow changes without requiring the thirty (30) days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect. . . .

*Idaho Code* § 61-307 (emphasis added). As expressly stated above, the Commission has the authority and discretion to change rates "without requiring the thirty (30) days' notice." *Id.*

In Order No. 31025, the Commission found that the method for revising the fuel cost adjustment to published avoided cost rates "is a simple arithmetic calculation." Order No. 31025 at 2. The Commission further found that "the change in avoided cost rates depicted in Attachments 2-4 to this Order accurately incorporate the Council's revised natural gas price forecast and are consistent with the Commission-approved SAR methodology. We find it reasonable to issue an Order implementing new published avoided cost rates without further notice or procedure." *Id.*

As the Commission explained in its Order granting reconsideration, the Commission found that it is "well established that a utility cannot be required to pay more for QF power than its avoided cost." Order No. 31057 at 6-7. The Commission further found that a "delay in changing avoided cost rates means that ratepayers are saddled with rates that are too high and therefore unreasonable. PURPA § 210(b); *Idaho Code* § 61-622." *Id.* at 6. Under PURPA the rates to be paid for QF power are not to exceed the utility's avoided costs. PURPA § 210(b), 16 U.S.C. § 824a-3(b), (d); 18 C.F.R. § 292.304(a)(2); *Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 621, 917 P.2d 766, 778 (1996). In *Rosebud*, our Supreme Court held that QF contracts in excess of avoided costs "will be considered *void ab initio*." *Id.* at 623, 917 P.2d at 780. The Commission concluded that its "explicit findings in Order No. 31025 can be read in no

other way than but an implicit finding of 'for good cause shown.'" The Commission exercised its authority in *Idaho Code* § 61-307 to implement rates on less than 30 days' notice.

4. Due Process. The Petitioners maintain that the issuance of new avoided cost rates in Order No. 31025 deprived them of their rights in violation of due process protected by the state and federal constitutions. Petition at 11. Petitioners state "PURPA's published avoided cost rates are a government created statutory entitlement." Petition at 12. Petitioners are wrong. The Petitioners have confused "eligibility" with "entitlement." Our Supreme Court has previously held that QFs are not entitled to individual notice or an opportunity to be heard before the Commission changes avoided cost rates. In *Rosebud Enterprises v. Idaho PUC*, 131 Idaho 1, 7, 951 P.2d 521, 527 (1997), the Court held that a QF without a "legally enforceable obligation" does not have "a reasonable expectation that [the Commission] could not change the methodology for determining avoided cost rates." In other words, Windland and AgPower "never had a property interest in the [prior] rates, and due process never attached to the IPUC's consideration of the change of the [prior] rates." *Id.* (emphasis added). As the Court explained in *Rosebud*, a "legally enforceable obligation" is where the Petitioners have signed a power contract with the utility where it is legally obligated to deliver power, or where they have filed "a meritorious complaint alleging that the [QF] project is mature and that the [QF] developer has attempted and failed to negotiate a contract with the utility but for the conduct of the utility." *Id.* at 6, 951 P.2d at 526, *citing A. W. Brown v. Idaho Power Co.*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992).

Here the Petitioners do not have signed contracts. However, Windland and AgPower have each filed a complaint alleging that they are entitled to the higher grandfather rate prior to Order No. 31025. Without addressing the merits of their complaints, we note that this case is about the setting of new avoided cost rates, while their complaints address the merits of whether they are entitled to the previous avoided cost rates. Consequently, the Petitioners did not have a property interest in the prior avoided cost rates, and due process never attached to the Commission change in the rates.

### *C. Other Issues*

1. Investments. Petitioners also claim they made financial investment in their projects in reliance on the published rates. However, any outlay by QFs prior to an executed and approved power purchase contract is a cost of project development. We have long

acknowledged that there are milestones to be accomplished before a project matures to the point that it is entitled to a power purchase contract. We find, as did the Idaho Supreme Court in *Rosebud*, that any expectation that the rates would continue unchanged was misplaced and without foundation. 131 Idaho at 7, 951 P.2d at 527. Nor is there any QF right to a period of time before rates change to get their affairs in order. Any advice received to the contrary was mistaken.

The change in rates in this case was initiated by the Commission and was an administrative and ministerial act executed pursuant to a previously adopted methodology. The change in rates was triggered by a change in the forecasted natural gas prices by the Northwest Power and Conservation Council. Petitioners state "that Staff feels it necessary to send its draft calculation to the utilities for their review confirms that the methodology is not so simple that notice to interested parties is unnecessary." Petition at 12. Petitioners are wrong. As we stated in our Order No. 31057 granting limited reconsideration,

> Our characterization of the change in rates to be "a simple arithmetic calculation" is not a mischaracterization. The recalculation process consists of (1) copying (or cutting as the computer function is often called) the column of numbers (prices) set forth in the Council's medium case fuel price forecast (East-Side Delivered), (2) pasting them into the avoided cost calculation model (whereupon an instantaneous recalculation occurs), and (3) pushing the print button.

2. Symmetry. We next address the Petitioners' argument that the procedures followed for increasing and decreasing rates under the approved methodology are non-symmetrical. We find the consequences of delay for each are more important than such symmetry. When avoided costs, and therefore rates, increase, neither QFs nor ratepayers are harmed. On the other hand when avoided costs decrease, there are real economic consequences and harm to the utility and its customers if the utility were required to pay QFs more than the utility's avoided costs. Indeed, as stated above, the rates to be paid for QF power are not to exceed the utility's avoided costs. Such a result is prohibited by PURPA and FERC regulations. 18 C.F.R. §§ 292.101(b)(6); 292.304(a)(2).

Under PURPA Sections 201 and 210, QFs selling their energy have a statutorily mandated purchaser, the regulated utilities. The risk of rates being reduced prior to contract execution and a legally enforceable obligation must lie with the QF, not the utility and not the ratepayers. Petitioners state "absent the rates purportedly available in Order No. 30744, the

economic viability of Petitioners' projects would be substantially diminished." Petition at 12. We remind Petitioners that the avoided costs on which published rates are based are those of the utility, and are not based on the purchase prices required to make a QF financially viable. In demanding a contract at the higher rate, Petitioners are demanding a subsidy from ratepayers, which results in a purchase rate exceeding the utility's avoided costs. This Commission has no authority to grant such a subsidy.

## CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Avista Corporation dba Avista Utilities, Idaho Power Company, and PacifiCorp dba Rocky Mountain Power, electric utilities, pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Commission has authority under PURPA Sections 201 and 210 and the implementing regulations of the Federal Energy Regulatory Commission (FERC), 18 C.F.R. § 292, to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy and capacity from qualified facilities and to implement FERC rules.

## ORDER

In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission reaffirms the published avoided cost rates published in Order No. 31025. To the extent that Petitioners in their Petition for Reconsideration requested that the rates be vacated and the higher rates of Order No. 30744 be reinstated, we find their arguments unpersuasive.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. GNR-E-10-01 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 28th day of May 2010.

JIM D. KEMPTON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

MACK A. REDFORD, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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