

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S)	
INVESTIGATION INTO DISAGGREGATION)	CASE NO. GNR-E-11-01
AND AN APPROPRIATE PUBLISHED)	
AVOIDED COST RATE ELIGIBILITY CAP)	
STRUCTURE FOR PURPA QUALIFYING)	ORDER NO. 32262
FACILITIES.)	
)	

The Commission initiated this proceeding to investigate and determine requirements by which wind and solar qualifying facilities (QFs) could obtain a published avoided cost rate without enabling large QFs to obtain a rate that does not accurately reflect a utility’s avoided cost for such projects. Pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA) and regulations issued by the Federal Energy Regulatory Commission (FERC), this Commission must publish avoided cost rates for small QFs with a design capacity of 100 kilowatts (kW) or less.¹ However, the Commission has the discretion to set the published avoided cost rate at a higher capacity amount – commonly referred to as the “eligibility cap.” 18 C.F.R. § 292.304(c)(1) and (2). In establishing eligibility criteria for a published rate, the Commission may differentiate among QFs. 18 C.F.R. § 292.304(c)(3). By this Order, and as set out in greater detail below, the Commission maintains a 100 kW eligibility cap for published avoided cost rates for wind and solar QFs. The 10 average megawatt (aMW) eligibility cap remains in place for QF projects other than wind and solar.

BACKGROUND

***A. The Joint Petition
GNR-E-10-04***

On November 5, 2010, Idaho Power Company, Avista Corporation, and PacifiCorp dba Rocky Mountain Power filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues related to the Commission’s implementation of PURPA. While the Commission pursued its investigation, the utilities also moved the

¹ Section 210 of PURPA generally requires electric utilities to purchase power produced by qualifying facilities (QFs) at “avoided cost” rates set by the Commission. “Avoided costs” are those costs which a public utility would otherwise incur for electric power, whether that power was purchased from another source or generated by the utility itself. 18 C.F.R. § 292.101(b)(6).

Commission to “lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW [to] be effective immediately. . . .” *Id. citing* Joint Petition at 7. When a QF project is larger than the eligibility cap set for access to *published* avoided cost rates, the avoided cost rates for the project must be individually negotiated by the QF and the utility using the Integrated Resource Plan (IRP) Methodology. Order No. 32176.

The purpose of utilizing the IRP Methodology for large QF projects is to more precisely value the energy being delivered. *Id.* at 10. The IRP Methodology recognizes the individual generation characteristics of each project by assessing when the QF is capable of delivering its resources against when the utility is most in need of such resources. The resultant pricing is reflective of the value of QF energy to the utility. Utilization of the IRP Methodology does not negate the requirement under PURPA that the utility purchase the QF energy.

On December 3, 2010, the Commission issued Order No. 32131 declining the utilities’ motion to immediately reduce the published avoided cost rate eligibility cap from 10 aMW to 100 kW. Order No. 32131 at 5. However, the Order did notify parties that the Commission’s decision regarding the motion to reduce the published avoided cost eligibility cap would become effective on December 14, 2010. *Id.* at 5-6, 9.

Based upon the record in the GNR-E-10-04 case, the Commission subsequently found that a “convincing case has been made to temporarily reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar only while the Commission further investigates” other avoided cost issues. Order No. 32176 at 9 (emphasis original). The Commission also announced its intent to initiate additional proceedings to investigate and address the disaggregation of large projects. *Id.* at 11.

On reconsideration, the Commission affirmed its decision to temporarily reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar projects. Order No. 32212. Thus, the eligibility cap for published avoided cost rates for wind and solar QF projects was set at 100 kW effective December 14, 2010.

B. Procedural History
GNR-E-11-01

On February 25, 2011, consistent with its stated intent to investigate disaggregation, the Commission issued a Notice of Inquiry, Notice of Intervention Deadline, Notice of Scheduling and Notice of Technical Hearing. Order No. 32195. Specifically, the Commission

solicited information and investigation of a published avoided cost rate eligibility cap structure that: (1) allows small wind and solar QFs to avail themselves of published rates for projects producing 10 aMW or less; and (2) prevents large wind and solar QFs from disaggregating into small projects in order to obtain published avoided cost rates that exceed a utility's actual avoided cost.

All parties of record from Case No. GNR-E-10-04 (Phase I of the generic PURPA investigation) were automatically added as parties to the present, GNR-E-11-01 case (Phase II of the generic PURPA investigation). Several additional parties also filed for intervention. All parties were granted intervenor status. A total of 22 parties are listed in the Notice of Parties issued on March 15, 2011.² The Commission established guidelines for discovery and deadlines for prefiled direct and rebuttal testimony. Testimony was filed by seven witnesses on behalf of Avista, Idaho Power, Rocky Mountain Power, Commission Staff, Renewable Northwest Project, Intermountain Wind, and the Northwest and Intermountain Power Producers Coalition (NIPPC).

On March 17, 2011, Rocky Mountain Power filed a Motion for Clarification and Motion for Protective Order. Rocky Mountain Power argued that all of the questions in NIPPC's First Production Request were outside the scope of the issues delineated by the Commission's Notice of Inquiry. Order No. 32195. Rocky Mountain Power asked that the Commission stay NIPPC's discovery requests until after the Commission decides the disaggregation issue. NIPPC opposed Rocky Mountain Power's Motion, stating that answers to the discovery requests were critical in any investigation into disaggregation. The Commission granted Rocky Mountain Power's Motion, finding that the discovery questions were beyond the scope of the present case and staying Rocky Mountain Power's obligation to answer the discovery. Bench Order issued March 23, 2011.

A technical hearing was held in Boise, Idaho on May 10-11, 2011. The following parties appeared by and through their respective counsel or representative:

Avista Corporation	Michael G. Andrea, Esq.
Idaho Power Company	Donovan Walker, Esq. Jason Williams, Esq.
PacifiCorp dba Rocky Mountain Power	Kenneth E. Kaufmann, Esq.

² Idaho National Laboratory's Conventional Renewable Energy Group filed for intervenor status but later withdrew as a party to the proceeding.

Commission Staff	Kristine Sasser, Esq.
Northwest and Intermountain Power Producers Coalition (NIPPC)	Peter J. Richardson, Esq. Gregory M. Adams, Esq.
Cedar Creek Wind, LLC	Ronald L. Williams, Esq.
Renewable Energy Coalition (Telephonically)	John R. Lowe
Intermountain Wind, LLC	Dean J. Miller, Esq.
North Side Canal Company, Twin Falls Canal Company	Shelley M. Davis, Esq.
Renewable Northwest Project	Dean J. Miller, Esq.
Idaho Conservation League	Benjamin J. Otto, Esq.
Snake River Alliance	Ken Miller

DISCUSSION

In initiating this case, we stated that “[t]his Commission is supportive of all small power producers contemplated by PURPA, including wind and solar, and it is not the Commission’s intent to push small wind and solar QF projects out of the market.” Order No. 32176 at 11. The Commission was concerned that large QF projects were disaggregating into smaller QF projects in order to be eligible for published avoided cost rates that may not be just and reasonable to the utility customers or in the public interest. Order No. 32195 at 3. It was on that basis that the Commission asked the parties to provide information regarding how small wind and solar QFs could obtain a published avoided cost rate without allowing large QFs to obtain a rate that does not accurately reflect a utility’s avoided cost for such projects. The purpose of distinguishing between small and large QFs with the application of the IRP Methodology for large QF projects is to more precisely value the energy being delivered. Order No. 32195 at 1.

Three general positions were put forth by the witnesses at hearing: (1) leave the eligibility cap for wind and solar QFs at 100 kW; (2) return the eligibility cap for wind and solar QFs to 10 aMW; or (3) fashion criteria that would allow small wind and solar QFs to obtain a

published rate contract if they were producing 10 aMW or less, but would prohibit larger QFs who disaggregate from obtaining a published rate contract.

A. Maintain 100 kW Eligibility Cap for Wind and Solar

Avista, Idaho Power, and Rocky Mountain Power witnesses argued that the best solution to prevent disaggregation of large QF projects is to maintain an eligibility cap for published avoided cost rates at 100 kW for wind and solar projects.³ Despite the positions of some QF developers that their projects are small, the utilities assert that PURPA distinguishes between small and large projects by mandating that published/standard rates be set for projects producing 100 kW or less. The utilities insist that this is the proper threshold for setting published rates and would effectively eliminate the ability of large projects to disaggregate.

Rocky Mountain Power acknowledged that the Commission has the task of determining “how to strike the right balance between the competing policy objectives of encouraging renewable energy development by non-utility generators and preserving the low rates for the utility customers of Idaho.” Tr. at 597. Idaho Power maintained that it is not the Commission’s responsibility to incent QF development through the avoided cost rates that the Commission sets. “The promotion comes from the obligation of the utilities to purchase through their obligation to contract with those facilities. . . .” Tr. at 600. Avista stressed that a 100 kW cap would ease the Commission’s administrative burden, provide the certainty that the parties are looking for, and provide PURPA developers with “the rate that they’re entitled to, an actual avoided cost rate.” Tr. at 606.

The utilities insist that any set of criteria would be susceptible to circumvention because of the economic incentive for QF developers to obtain the current published avoided cost rate. Idaho Power urged the Commission to maintain the 100 kW cap and continue its investigation and inquiry into the Surrogate Avoided Resource (SAR)⁴ Methodology and IRP Methodology. “Please do not address the rules by which a QF can obtain a price prior to that time in which you determine whether that price is proper for them to have in the first place.” Tr. at 601.

³ Commission Staff also acknowledged that retaining the 100 kW eligibility cap for wind and solar was a possible alternative to adopting criteria to prevent disaggregation. Tr. at 551.

⁴ The SAR Methodology is the process through which the current published avoided cost rates are calculated.

B. Return Eligibility Cap to 10 aMW for Wind and Solar

Northwest and Intermountain Power Producers Coalition’s (NIPPC) witness argued that the 10 aMW published avoided cost rate structure (prior to the eligibility cap reduction to 100 kW for wind and solar) has worked “remarkably well for Idaho” and that “the utility ruse of using current market data to prove that avoided cost rates are too high is a ruse that is as old as PURPA itself.” Tr. at 593. “We fundamentally think that it is unfortunate that the three utilities initiated this docket at all. We believe that this docket has been an unnecessary exercise and that is because the system is not broken and hence, it does not need to be fixed.” Tr. at 592.

NIPPC maintained that QF projects are doing nothing more than complying with Commission Orders and standards. “The result is that a large number of projects have been able to utilize the current system to successfully build wind projects.” Tr. at 492. NIPPC opposed the adoption of criteria to distinguish between small and large QFs because of the uncertainty that such criteria would create for developers. “That uncertainty is surely not going to engender a positive climate for developers investing capital in QF projects.” Tr. at 497. Ultimately, NIPPC argued that “[i]f the avoided cost rates are too high, the remedy is simple, just revisit the rates, but don’t dismantle a proven, workable system that this Commission painstakingly and sometimes painfully put in place over the last 30 years.” Tr. at 594.

C. Criteria to Allow Small Projects to Obtain a Published Rate at 10 aMW

The Idaho Conservation League (ICL), Renewable Northwest Project (RNP), Intermountain Wind, Rocky Mountain Power,⁵ and Commission Staff support devising a framework where small QF projects could obtain a published rate for projects producing 10 aMW or smaller but disallow larger QF projects from obtaining a published rate that is not an accurate reflection of the utility’s avoided cost. In its rebuttal testimony, Rocky Mountain Power proposed a list of criteria to be considered in determining published avoided cost rate eligibility. Exh. 205. Rocky Mountain Power worked collaboratively with ICL and RNP to establish workable criteria. Commission Staff proposed similar criteria but allowed for more Commission discretion in determining whether a project was disaggregating.

⁵ Rocky Mountain Power’s primary position is to maintain the 100 kW eligibility cap for wind and solar QF projects. We commend Rocky Mountain’s efforts in working with other parties to comply with the Commission’s directive to suggest an eligibility cap structure that would allow small QFs to avail themselves of a published avoided cost rate while preventing large QFs from disaggregating to obtain the published rate.

The parties used criteria such as ownership, shared facilities, shared agreements, common control, and shared debt and/or equity as considerations regarding whether a group of projects were truly separate and small projects, or a single large project disaggregated into several smaller projects to obtain published avoided cost rates. Applying these criteria to projects would allow the Commission to determine the appropriateness of using the published rates or IRP-derived rates. Specifically, small wind and solar QFs would be able to access published rates, while large projects would utilize the IRP Methodology that takes into account the true size of the project and the unique characteristics of the generating resource.

COMMENTS

Six public comments were filed with the Commission. All comments encouraged the Commission to maintain the 100 kW eligibility cap for access to published avoided cost rates for wind and solar QFs. The commenters noted that failure to maintain the 100 kW threshold for wind QFs would result in higher rates for utility customers, increased operational burdens for the utilities, and present reliability issues based on wind's intermittent nature.

FINDINGS AND CONCLUSIONS

The Idaho Public Utilities Commission has jurisdiction over this matter 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 and its implementing regulations of FERC to set avoided costs, to establish standard published avoided cost rates, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC regulations.

Under FERC rules, utilities are required to purchase QF generation at a rate equal to the utility's avoided cost. 18 C.F.R. § 292.304(b)(2). "Avoided costs" are the incremental costs to the electric utility of power which, but for the purchase from the QF, such utility would generate itself or purchase from another source. 18 C.F.R. § 292.101(b)(6). Although FERC promulgated the general scheme and rules, it left the actual implementation of PURPA to the state regulatory authorities. *Rosebud Enterprises, Inc. v. Idaho Public Utilities Commission*, 128 Idaho 609, 614, 917 P.2d 766, 771 (1996). FERC regulations grant the states latitude in implementing the regulation of sales and purchases between QFs and electric utilities. *See Federal Energy Regulatory Commission v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982).

Based upon the record in this case and after careful consideration of the positions presented, the Commission finds it appropriate to maintain the 100 kW eligibility cap for published avoided cost rates for wind and solar QFs. We find that any attempt to implement criteria in an effort to prevent disaggregation would be met by attempts to circumvent such criteria. The economic incentive for the projects is obvious. QF developers are working within the current structure provided by this Commission. However, we emphasize that PURPA and our published rate structure were never intended to promote large scale wind and solar development to the detriment of utility customers. Avoided cost rates are to be just and reasonable to the utility's ratepayers. 18 C.F.R. § 292.304(a)(1). PURPA entitles QFs to a rate equivalent to the utility's avoided cost, a rate that holds utility customers harmless – not a rate at which a project may be viable. 18 C.F.R. § 292.304(a)(2). If we allow the current trend to continue, customers may be forced to pay for resources at an inflated rate and, potentially, before the energy is actually needed by the utility to serve its customers. This is clearly not in the public interest.

PURPA and the implementing regulations require only that published/standard avoided cost rates be established and made available to QFs with a design capacity of 100 kW or less. 18 C.F.R. § 292.304(c). Maintaining the eligibility cap of 100 kW does not change the published avoided cost rates established in Order No. 31025 (March 16, 2010). Wind and solar projects larger than 100 kW continue to be entitled to PURPA contracts at avoided cost rates calculated using the IRP Methodology. Furthermore, a 100 kW threshold for wind and solar QFs provides a certainty to the parties in negotiations that disaggregation criteria would not. While we recognize the impact that this decision will have on small wind and solar projects, it would be erroneous, and illegal pursuant to PURPA, for this Commission to allow large projects to obtain a rate that is not an accurate reflection of the utility's avoided cost for the purchase of the QF generation. *Rosebud Enterprises*, 128 Idaho at 623, 917 P.2d at 780, citing *Connecticut Light & Power Co.*, 70 F.E.R.C. ¶ 61,012 (1995).

Our attempt to consider disaggregation outside of the larger framework of SAR and IRP Methodologies was ultimately not practical. We believe it is more appropriate to first establish the just and reasonable avoided cost rates before we implement procedures for obtaining the rate. Therefore, the Commission initiates additional proceedings to allow the parties to investigate and analyze both the SAR Methodology and the IRP Methodology (GNR-

E-11-03). As we have previously stated, we believe that properly applied, the IRP Methodology appropriately assesses the value of a QF project in terms of its capability to deliver its resources when the utility is most in need of such resources. We believe that the resultant pricing is reflective of the value of QF energy to the utility and its customers. Order No. 32176. However, we encourage a full examination of the application of the IRP Methodology and are open to considering alternatives to the current methodologies.

The Commission directs the parties to meet informally within 30 days of the issuance of this Order to: identify the issues; establish a proposed schedule, including dates for discovery, prefiled direct testimony and rebuttal; and present the same for Commission review.

ORDER

IT IS HEREBY ORDERED that the 100 kW eligibility cap for wind and solar QFs access to published avoided cost rates is affirmed.

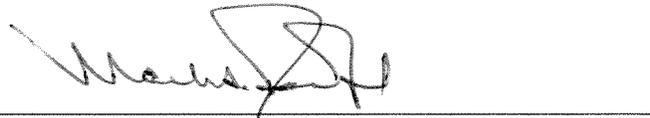
IT IS FURTHER ORDERED that the parties meet informally within 30 days of the issuance of this Order to identify the issues and establish a schedule for the next phase of the Commission's inquiry into the SAR Methodology and IRP Methodology.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

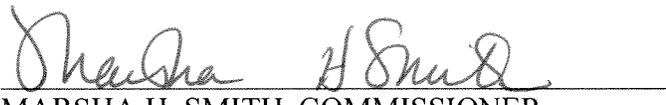
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8th
day of June 2011.



PAUL KJELLANDER, PRESIDENT



MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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