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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
IDAHO POWER COMPANY FOR APPROVAL ) CASE NO. IPC-E-03-1  
OF AN AGREEMENT FOR SALE AND )  
PURCHASE OF FIRM ELECTRIC ENERGY )  
BETWEEN IDAHO POWER COMPANY AND ) COMMENTS OF THE  
TIBER MONTANA LLC. ) COMMISSION STAFF  
\_\_\_\_\_ )**

**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on March 17, 2003, submits the following comments.

**BACKGROUND**

On February 20, 2003, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a Firm Energy Sales Agreement (Agreement) between Idaho Power Company and Tiber Montana LLC (Tiber). Under the Agreement, Tiber would sell and Idaho Power would purchase, during certain months of the year, net firm electric energy and surplus energy generated by Tiber's generation facility. Tiber proposes to design, construct, install, own and maintain a 7.5 MW

hydroelectric generating facility located on the outlet works of the existing Tiber Dam, located approximately 15 miles south of the city of Chester in Liberty County, Montana. The project will be a Qualifying Facility (QF) under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 (PURPA).

On February 3, 2003, Idaho Power and Tiber entered into a Firm Energy Sales Agreement (Agreement) pursuant, Idaho Power contends, to the rates, terms and conditions approved by the Commission in Order Nos. 29069 and 29124. In the Agreement, Tiber elected to contract with Idaho Power for a 20-year term using the non-levelized published avoided cost rates (posted rates) and committed to deliver energy to the Company only during the months of May, June, July, August, September and October of each contract year. An entity identified as NorthWestern Energy (the distribution company serving areas formerly served by Montana Power) will purportedly purchase the plant's output during the balance of the year.

The Tiber Project is located outside of Idaho Power's service territory. The entity transmitting the Project's power to Idaho Power's transmission system, NorthWestern Energy, has purportedly agreed to "firm" all energy deliveries from Tiber to Idaho Power. This will result in flat monthly energy scheduled into the Idaho Power system.

The Agreement between Idaho Power and Tiber is the first Firm Energy Sales Agreement under PURPA to be executed by the Company since the mid 1990s. When compared to other Firm Energy Sales Agreements approved by the Commission prior to the mid 1990s, certain terms and conditions of the Agreement between Idaho Power and Tiber have been updated and/or revised in conformance with (1) current Commission Orders, (2) current technologies, and (3) current utility standards.

## **ANALYSIS**

Staff has reviewed the rates contained in the Agreement and finds that they comport with Order No. 29124, the most recent Commission order establishing avoided cost rates. However, because this Agreement contains terms and conditions significantly different than have been included in prior QF contracts, Staff believes it is important to address these new and/or revised terms and conditions because they directly affect the amounts Idaho Power will pay to Tiber.

### **Measurement of the 10 MW Rating**

Under Commission Order Nos. 29069 and 29124 QFs up to 10 MW in size are eligible

for the posted rates. However, Idaho Power states, these Orders did not specify the manner in which the size of the QF was to be measured. Measurement of the size of a QF can be determined on the basis of such methods as nameplate designation, net generation or gross generation. To address this uncertainty, Idaho Power and Tiber have agreed to include the concept of "Optional Energy" in lieu of reference to the nameplate rating used in prior firm energy agreements.

"Optional Energy" is defined in Section 1.10 of the Agreement as "Energy which is produced by the Facility, scheduled by the Transmitting Entity and delivered to the Point of Delivery in an amount that exceeds 10,000 kWh in any single hour." The Agreement provides that Idaho Power is not obligated to purchase Optional Energy. Prior to its delivery, the parties have the option to mutually agree on both the purchase and the sales price for Optional Energy. Including the concept of Optional Energy, Idaho Power states, allows Tiber to install generating capacity with a nameplate rating greater than 10 MW while still qualifying to be paid the posted rates the Commission established for projects smaller than 10 MW.

Staff believes that Idaho Power's proposal to use net generation measured on an hourly basis in determining whether the project is under the 10 MW threshold is reasonable. Staff believes that net generation of a QF project in a single hour, rather than gross average generation or nameplate capacity, is what should be used to define its capacity for eligibility of posted rates. Net generation in a single hour actually metered as entering Idaho Power's system is an appropriate basis for determining the amount of payment by the utility.

Staff does not believe nameplate capacity should be used to define capacity for purposes of determining qualification for posted rates. Nameplate capacity often exceeds the actual capacity of some projects, particularly those that typically operate at low capacity factors such as wind. Similarly, Staff does not believe gross generation would be an appropriate way to measure capacity. Some types of projects, particularly geothermal, have a sizeable internal energy requirement. Staff believes that the use of net generation treats all technologies fairly.

In the present case, because the nameplate rating of the Tiber Project is proposed to be 7.5 MW, Idaho Power believes Optional Energy is not likely to be an issue. Staff agrees. With a nameplate capacity of 7.5 MW and considering NorthWestern Energy's agreement to firm the project's output on a monthly basis, it would be impossible for the net generation measured on an hourly basis to exceed 10,000 kWh in any hour unless Tiber expands its capacity at some point in

the future. Because expansion is possible, however, Staff does not object to the inclusion of this provision in the contract.

Staff notes that Idaho Power's proposal would allow Tiber (or other QFs if this provision is included in future contracts) to install generating capacity with a nameplate rating greater than 10 MW while still qualifying to be paid the posted rates the Commission established for projects smaller than 10 MW. In theory, a very large project could elect to sell only 10 MW of its output under a PURPA contract at the posted rates, leaving the remaining output to be sold in some other manner. Staff believes the principles outlined in Order No. 26772 (Case No. UPL-E-96-5, the "Earth Power case") should continue to be followed henceforth with regard to whether multiple 10 MW contracts, perhaps with different utilities, would be permitted if the proposed Tiber contract terms are adopted. In Order 26772 the Commission ruled that the term "project" equates with "qualifying facility." Thus, each qualifying facility is only entitled to one PURPA contract. If this principle were followed with regard to the 10 MW project size threshold, it would preclude a large project from breaking its generation into several 10 MW blocks for sale at posted rates under multiple contracts or to multiple utilities. However, it would not prevent a large project from selling 10 MW of its output under a single contract to one utility and marketing the remainder outside of PURPA.

### **Encouraging Increased "Firmness" of QF Contracts**

Traditionally contracts between Idaho Power and QFs have been denominated as "Firm Energy Sales Agreements." The energy purchased under these contracts, Idaho Power contends, is not "firm energy" as that term is commonly defined by the electric industry. Firm energy purchases Idaho Power makes from non-QF suppliers specify the amounts to be delivered during heavy-load or light-load hours for the term of the agreement. If the energy is not delivered in the specified amounts at the specified times, liquidated damage provisions in the non-QF purchase agreements allow Idaho Power to acquire the energy from other sources and receive reimbursement from the defaulting supplier for all of the Company's costs.

Idaho Power also points out that the combined cycle combustion turbine (CCCT), which is the Surrogate Avoided Resource (SAR) the Commission has used to set the posted rates, is also a dispatchable producer of firm energy. If Idaho Power constructs a CCCT, the energy from that CCCT resource would be dispatched on a firm basis to meet customer loads or to allow for

surplus sales.

Idaho Power states that the Transmission Agreement between Tiber and NorthWestern Energy requires NorthWestern to firm Tiber's generation on a monthly basis. Tiber's generation can, and likely will, vary from one month to the next, but it cannot vary within a month according to the Transmission Agreement. Consequently, from Idaho Power's perspective, Tiber's generation will be more like a true firm-energy purchase. Nevertheless, Idaho Power believes that it is still necessary to include some additional provisions in the Tiber Agreement to encourage firmness.

Idaho Power concedes that it is probably not realistic to hold most QFs to the same standard of firmness as utility-owned generating plants or non-QF suppliers. However, Idaho Power and Tiber have included provisions in the Agreement to bring Tiber's project performance more in line with projects that actually provide firm energy production. The provisions will encourage Tiber to provide energy with a greater degree of "firmness" while at the same time allowing a reasonable amount of flexibility to Tiber in operating its facility. These types of provisions require QFs using various generating technologies to actually perform on a firm basis to receive the posted firm rates.

Under the concept of "Surplus Energy," Tiber is required to estimate its monthly generation. Each month, Tiber's actual net generation will be compared to the monthly generation estimated by Tiber. If Tiber's actual generation exceeds 110 percent of a month's estimated generation, the energy in excess of 110 percent is valued at the Surplus Energy Price. The Surplus Energy Price is a market-based price.

The Agreement also includes a purchase price adjustment provision in the event Tiber's generation falls short of the estimated amount. Under this provision, Tiber's actual net monthly generation is compared to the estimated monthly generation as described in the foregoing paragraph. If the amount of Net Firm Energy is 90 percent or less of the month's estimated generation, all of that month's generation will be deemed to be Surplus Energy for which Idaho Power will pay Tiber the Surplus Energy Price or the posted avoided cost rate, whichever is less, as defined by the Agreement.

According to Idaho Power, whether energy produced by Tiber is Surplus Energy or not is at the sole discretion of Tiber since Tiber sets the monthly estimated generation levels indicated in the Agreement. Tiber can reset the monthly estimated generation amounts every two years to

reflect its increased operating experience and to allow Tiber to respond to changes in water supplies, etc. The only limitation placed on Tiber by the Company is that the Net Firm Energy estimated for each month cannot exceed the nameplate rating of the generation equipment.

Staff agrees with Idaho Power that the generation provided by many QF projects is not firm as defined by industry standards. Staff also agrees that the posted avoided cost rates adopted by the Commission are based on the costs of a combined-cycle combustion turbine that would provide firm generation. However, while Staff believes it is reasonable in this case to include contract provisions regarding project standards of firmness given Tiber's concurrence, this is not a provision that has been required by the Commission in the past and should be further evaluated if opposed by developers in the future.

QF projects in the past have consisted mostly of small hydropower projects, many located on irrigation canals, whose generation was relatively steady and predictable. The handful of existing wood waste and cogeneration projects have provided generation in an even more predictable fashion. Still, there is wide variation in the predictability and "firmness" of existing projects. Now, with the strong interest in developing wind energy projects, the very different generating characteristics of various technologies make the potential problem of paying firm rates for non-firm generation all the more important. Wind projects generally are unable to deliver energy predictably on a short-term basis. On a long-term basis, however, their output may be more predictable than a small hydro project.

Staff believes that Idaho Power's proposal in this contract to require the project to commit two years in advance to monthly generation amounts accomplishes the goal of attaining planning certainty, but stops short of penalizing the project for inability to predict generation hours, days or weeks in advance. As a result, this project can qualify for firm energy rates if the developer can reasonably predict monthly generation levels.

Whether the 90 percent minimum or the 110 percent cap are the appropriate bounds for projects other than Tiber or whether firmness standards should be required at all should be determined, Staff believes, at the time other projects seek contracts with Idaho Power.

### **Seasonality**

Previous Commission Orders and QF agreements recognized that the value of energy generated differs in accordance with the season in which it is actually delivered to Idaho Power.

As an incentive for a QF to deliver energy to the Company during times when it is of greater value to the Company, the posted rates have historically been “seasonalized.” This means that generation in high demand months is paid at a rate of 120 percent of the avoided cost rate, generation in shoulder months at 100 percent and generation in low demand months at 73.5 percent of the avoided cost rate.

Idaho Power has seasonalized the rates in this Agreement. However, to better align the seasons with the months in which Idaho Power has identified actual energy needs, the months within each season have been modified from prior QF contracts to account for those periods of higher demand. Currently, the seasons and their associated weighting factors are as follows:

<u>Season</u>	<u>Weighting Factor</u>	<u>Months</u>
1	0.735	March – May
2	1.20	June – Sept.
3	1.00	Oct. – Feb.

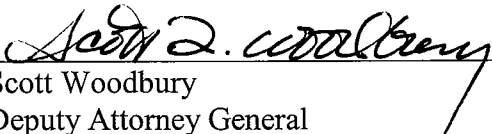
Idaho Power is proposing in this Agreement that the months of August and September be moved to “Season 3” and the months of November and December be moved to “Season 2.” This adjustment does not change the overall annual average payment – the average payment continues to be the posted rate.

Idaho Power’s 2002 Garnet Report, which was filed with the Commission as a follow-up to the 2002 IRP, identifies the months of November and December as months in which there is a need for additional generation capacity. The Company has also recently issued a request for proposals (RFP) for capacity and energy in November and December in addition to the months of June – August. Neither the Garnet Report nor the Company’s RFP precisely support the proposed modifications to the months included in each season, although they do support it generally. The fact is that Idaho Power’s months of greatest need or surplus change over time as new resources are acquired. The changes proposed by the Company are reasonable at this point in time, but Staff recognizes that different months may be more appropriate for each season in future contracts. Thus, for this Agreement, Staff believes it is appropriate to move November and December to Season 2. August and September, however, are months in which the Company is not expected to have as great a need for additional capacity. Consequently, Staff believes it is appropriate to move these months to Season 3.

## RECOMMENDATIONS

Idaho Power and Tiber have presented a negotiated PURPA contract for Commission approval. The contract rates are unlevelized and conform to Commission posted rates for QFs smaller than 10 MW. Staff believes that because both parties find the terms of the Agreement acceptable and because the proposed rates and terms do not violate prior Commission Orders, that the Commission should not stand in the way of the Agreement. Staff recommends that the Agreement be approved and that those non-standard terms unique to this contract (i.e. measurement of the 10 MW rating, encouraging increased firmness, and seasonality) not be viewed as precedential.

Respectfully submitted this <sup>4<sup>th</sup></sup> day of April 2003.

  
Scott Woodbury  
Deputy Attorney General

Technical Staff: Rick Sterling

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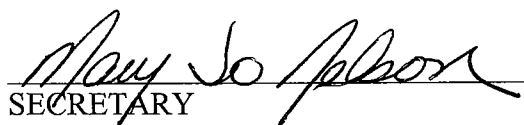


## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 4TH DAY OF APRIL 2003, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-03-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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