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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF A PETITION FILED BY IDAHO POWER COMPANY FOR APPROVAL OF MODIFICATIONS TO THE SECURITY PROVISIONS REQUIRED TO BE INCLUDED IN AGREEMENTS BETWEEN IDAHO POWER AND CO-GENERATORS AND SMALL POWER PRODUCERS	CASE NO. IPC-E-03-16 PETITION

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") and, pursuant to RP 53, hereby petitions the Idaho Public Utilities Commission ("IPUC" or the "Commission") to issue an Order authorizing Idaho Power to accept modified insurance and lien rights as satisfactory risk mitigation measures in agreements between Idaho Power and co-generators and small power producers ("CSPPs") that contain levelized avoided cost rates. Without risk mitigation, CSPPs desiring levelized rates must post liquid funds as security for the overpayments inherent in the levelized purchase rates.

The proposed modifications, described below, are intended to identify reasonable and realistic insurance and security alternatives for co-generators and small power producers that maintain an acceptable level of protection for the Company's ratepayers. This Petition is made on the following grounds and for the following reasons:

I.

In March 1987, the Idaho Public Utilities Commission initiated Case No. U-1006-292 (the "292 Case") in which the Commission conducted a comprehensive analysis of the security provisions of Idaho Power Company's contracts with cogeneration and small power producers.[1] The principal issue addressed at hearings conducted on this matter was that of security and assessing the need for and devising a means of protecting Idaho Power ratepayers from the perceived exposure and risk of non-recovery of overpayment resulting from the front end loading that occurs with levelized rates in power purchase contracts.

II.

On January 11, 1988, in Order No. 21692 in the 292 Case, the Commission established a requirement that CSPPs choosing to contract to sell power to Idaho Power at levelized rates must post liquid funds as security for the overpayments inherent in levelized purchase rates. That Order, as amended, further provides that the obligation to post liquid funds could be mitigated if certain requirements were met. Two of the mitigation methods permitted by Order No. 21692 are the purchase of certain basic insurance policies and the establishment of certain lien rights. Exhibit 1 lists the

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1 Although framed as an Idaho Power case, the Commission noted in Order No. 21446, issued in the 292 Case, that the implications of that Order had generic consequences for all Idaho-regulated utilities.

types of insurance and levels of coverages and deductibles deemed acceptable in Order No. 21692, as amended[2], as a substitute for posting a portion of the required liquid security. Exhibit 2 describes the lien rights of Idaho Power on CSPP projects that receive levelized purchase rates.

III.

Idaho Power routinely conducts audits of the Company's various CSPP projects to assess whether those projects continue to conform with the risk mitigation requirements of their specific agreements with the Company. When these audits identify projects that do not conform with their specific requirements, notices of non-compliance are sent to the applicable projects and Idaho Power works with those projects to bring the non-compliant items back into conformance.

In the Company's most recent audit, Idaho Power identified numerous projects that were not in compliance with respect to specific insurance requirements of the Company's agreements with those projects. Some projects carried no insurance while numerous others had insurance that were products standard in the insurance industry but which, in many circumstances, did not conform with the insurance requirements of the projects' agreements.

Notices were sent to the various projects which were non-compliant with respect to the insurance requirements and three common responses were received by Idaho Power from those projects: (1) the specific insurance required within the agreement is not currently available from the insurance industry; (2) because the insurance is not available, as a matter of law (the Doctrine of Impossibility), Idaho

2 Order No. 21692 has been amended by IPUC Order No. 25240 that was issued in Case No. IPC-E-93-22 on November 2, 1993.

Power cannot enforce these requirements or require alternative security; and (3) the financing structures of existing projects do not allow Idaho Power to place a second lien on the project as required in the 292 Case.

Idaho Power contacted various insurance providers and verified the unavailability of the specified insurance from the insurance industry. Idaho Power also reviewed the potential application of the Doctrine of Impossibility and recognizes that it may be a legitimate claim that may be upheld in legal proceedings. Finally, it is possible that the financing arrangements of existing projects would preclude a subsequent lien position by Idaho Power or any other party without the consent of the primary lender.

On February 19, 2003, Idaho Power met with IPUC staff members and discussed the CSPP insurance and second lien issues. The IPUC staff acknowledged problems in the insurance industry and agreed with the Idaho Power that, while it is important to preserve the ratepayers' overpayment protection, it is also important to structure these products in a manner that is reasonably attainable by the CSPP projects.

IV.

In certain cases, the financing arrangements of a CSPP do not allow a second lien position as anticipated in Order No. 21692, as amended. However, where those restrictions do not exist, the Company either places a second lien on a project at the time a levelized rate agreement is executed or at the time a project is amended to conform to the risk mitigation requirements of Order No. 21692, as amended.

Realistically, however, the value of security obtained by placement of a second lien on a project is tenuous. Either the value of the equipment, particularly on less sophisticated projects, is negligible since used or rebuilt equipment is utilized (often non-standard utility equipment, pump motors running in reverse, etc.) or the value of that equipment is heavily financed and the financial institution has a first lien on those assets making the value of the second lien marginal. As a project ages and the financing is either paid or at least reduced, the value of the assets depreciate over the same time frame.

Thus, were a project to default, the value of the assets remaining for the second lien would be minor due to removal and other costs. Furthermore, the value of a project is generally not the actual value of the physical equipment; instead, the marketable and bankable value of a project is the value of the projected revenues of the energy delivered to Idaho Power under the levelized rate agreement. This has been verified in many historical transactions. When projects have fallen into financial difficulties, the financial institutions have acquired the project, maintained the CSPP agreement with Idaho Power and then resold the project (assets and Idaho Power's sales agreement) to a subsequent owner. Clearly, the financial institutions have identified that the reclaimed assets from these projects are insignificant without the accompanying energy sales agreement to Idaho Power.

V.

In response to the requirements of the insurance industry and either the negligible value of second liens on CSPP projects or the Company's inability to obtain a second lien on a CSPP project, Idaho Power proposes to conform its CSPP contract requirements to comply with contemporary insurance industry standards and realistic lien rights. Due to the marginal value of the secondary lien position and the inability of the Company, in some circumstances, to obtain security in the form of a second lien, Idaho Power proposes to delete the secondary lien right as a risk mitigation measure in levelized rate agreements with CSPPs.

Exhibit 3 shows, in legislative format, the proposed changes to the basic business insurance requirements that are now deemed by the insurance industry to be reasonably available to the CSPPs. It appears that the changes to the existing requirements shown in Exhibit 3 could be made to the required basic business insurance coverages without imposing substantial additional risk in the event of a default by a CSPP. In addition, by better aligning these requirements with current insurance industry standards and business practices, enforcement and compliance with these requirements will be reasonably attainable.

VI.

Service of pleadings, exhibits, orders and other documents relating to this proceeding should be served on the following;

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VII.

NOW WHEREFORE, based on the foregoing, Idaho Power Company hereby requests that the Commission issue its Order:

(1) finding that the modified insurance requirements shown in Exhibit 3 would be acceptable as the "basic business insurance" coverages for purposes of risk

mitigation as established in Order No. 21690, as amended, for future CSPP agreements and for preexisting CSPP projects as their current insurance is renewed; and

(2) finding that the requirement for the establishment of secondary lien rights in favor of Idaho Power Company as established in Order No. 21690, as amended, for future CSPP agreements and for preexisting CSPP projects as their agreements are amended be rescinded.

Idaho Power Company does not believe that an evidentiary hearing is necessary to consider the issues presented by this Petition and requests that the matter be processed under modified procedure.

Respectfully submitted this 4th day of November 2003.

Monica B. Moen

MONICA B. MOEN
Attorney for Idaho Power Company

EXHIBIT 1

INSURANCE

TYPE	*LIMITS*	*MAXIMUM DEDUCTIBLE*
Commercial General Liability	*The greater of 15% of plant cost or $1 Milliion/incident*	*0.5% of Plant Cost*
All Risk Property	*Not less than 90% of Plant Cost*	*0.5% of Plant Cost or $25,000, whichever is greater*
Catastrophic Perils (Earthquake and Flood)	*Not less than 60% of equipment cost*	*5% of Plant Cost*
Boiler/Machinery	*Not less than 90% of equipment cost*	*5.0% of equipment cost or $25,000, whichever is greater*
Loss of Income (Business Interruption)	*Not less than 75% of estimated daily income; not less than 20% of estimated annual income*	*30 days of income*

All of the above insurance coverages shall be placed with insurance companies with an A.M. Best rating of A- or better.

EXHIBIT 2

SECOND LIEN RIGHTS

The project will provide Idaho Power with adequate security interest in the project, including, but not limited to:

1. A Deed Of Trust securing the project real property and improvements;
2. Title Insurance;
3. A contractually stipulated first lien amount, if any;
4. Appropriate U.C.C. security interests in personal property and fixtures; and
5. Assignments for security purposes of all contract rights including the Firm Energy Sales Agreement, water rights, permits, licenses, easement, etc, relating to the project.

The form of the liens will be tailored to the individual projects depending on the first lien financing and other individual characteristics of the project. Idaho Power's lien rights will be subordinated only to the initial long-term financier's lien, if any.

EXHIBIT 3

INSURANCE

TYPE	***LIMITS***	***MAXIMUM DEDUCTIBLE***
Commercial General Liability	*~~The greater of 15% of plant cost or~~ $1Milliion/incident*	*~~0.5% of Plant Cost~~ Consistent with current Insurance Industry Utility practices for a similar property.*
All Risk Property	*Not less than ~~90%~~ 80% of Plant Cost*	*~~0.5% of Plant Cost or $25,000, whichever is greater~~ Consistent with current Insurance Industry Utility practices for a similar property.*
Catastrophic Perils (Earthquake and Flood)	*Not less than ~~60%~~ 80% of equipment cost*	*~~5% of Plant Cost~~ Consistent with current Insurance Industry Utility practices for a similar property.*
Boiler/Machinery	*Not less than ~~90%~~ 80% of equipment cost*	*~~5.0% of equipment cost or $25,000, whichever is greater~~ Consistent with current Insurance Industry Utility practices for a similar property.*
Loss of Income (Business Interruption)	*Not less than 75% of estimated daily income; not less than 20% of estimated annual income*	*~~30 days of income~~ Consistent with current Insurance Industry Utility practices for a similar property.*

All of the above insurance coverages shall be placed with insurance companies with an A.M. Best rating of A- or better.