

DECISION MEMORANDUM

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

FROM: SCOTT WOODBURY

DATE: FEBRUARY 9, 2004

SUBJECT: CASE NO. IPC-E-04-1 (Idaho Power)
AGREEMENT FOR SALE AND PURCHASE OF ELECTRIC ENERGY
IDAHO POWER/UNITED MATERIALS OF GREAT FALLS, INC.

On February 4, 2004, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission; IPUC) requesting approval of an Energy Sales Agreement (Agreement) between Idaho Power and United Materials of Great Falls, Inc. (United Materials) dated January 6, 2004.

United Materials proposes to design, construction, install, own, operate and maintain a 9 MW wind generating facility (the Horseshoe Bend Wind Park or the Project) located at the United Materials industrial facility near Great Falls, Montana. The Project will be a qualified small power production facility (QF) under the Public Utilities Regulatory Policy Act of 1978 (PURPA).

As represented by Idaho Power, the Agreement includes purchase prices consistent with the "posted rates" approved by the Commission in Order No. 29391. United Materials has elected to contract with Idaho Power for a 20-year term and has agreed to arrange for delivery of energy to the Idaho Power electrical system across the system of another utility.

The submitted Agreement is the first wind energy generation energy sales agreement to be executed by Idaho Power. Idaho Power reports that it has developed a cogeneration small power producer (CSPP; QF) agreement concept that is consistent for all QF projects regardless of their energy resource (wind, hydro, geothermal, wood waste, etc.) that incorporates (1) current IPUC Orders, (2) current technologies, and (3) current utility industry standards. The submitted

Agreement, the Company states, contains many of these concepts as well as several unique provisions since the project is not directly connected to the Idaho Power system. The following is a brief description of some of these concepts and unique provisions:

A. Opportunity for QFs to Participate in the Firm Energy Sales

Agreement: In order to eliminate the need to predetermine the firm or non-firm status of a Qualifying Facility (QF) resource (i.e., wind, hydro, biomass) and, instead, to provide an opportunity for QF resources to receive the Firm Published Avoided Cost Rate based upon the QF's actual performance, Idaho Power has included the concepts of "Shortfall Energy" and "Surplus Energy." Reference Agreement Sections 1.21 and 1.24.

Surplus Energy: Under the concept of "Surplus Energy," the QF is required to estimate its monthly kWh generation (Agreement Section 6.2). Each month, the actual net kWh of generation will be compared to the monthly kWh of generation estimated by the QF developer. If a project's actual kWh of generation exceeds 110% of a month's estimated kWh of generation, the energy in excess of 110% is valued at the Surplus Energy Price as described in Agreement Section 7.3. The Surplus Energy Price is a market-based price.

Shortfall Energy: Under this concept, a project's actual net monthly kWh of generation is compared to the estimated monthly kWh of generation. In accordance with Agreement Section 1.21, if the amount of Net Energy is less than ninety percent (90%) of the month's estimated kWh of generation, the difference between the actual net monthly kWh of generation and 90% of the estimated monthly kWh of generation is defined as "Shortfall Energy." If the market energy cost as defined in Agreement Section 1.13 is greater than the Agreement's price for energy in the month that shortfall energy occurs, then a "Shortfall Energy payment" is off-set against the project's energy payment. If the market energy cost is less than the Agreement's price for energy for the month in which Shortfall Energy occurs, no Shortfall Energy payment is calculated.

Whether a QFs energy production is Surplus Energy, Shortfall Energy or qualifies for the firm published avoided cost, the Company states, is at the sole discretion of the developer since the developer sets the monthly estimated generation levels. The only limitation placed upon the developer by the Company is that the Net Energy estimated for each month cannot exceed the nameplate rating of the generation equipment and/or the capacity rating of the interconnection equipment. The Project has chosen to make use of non-firm transmission capacity to deliver the Project's energy to Idaho Power. United Materials must therefore consider the risk of energy delivery reductions due to transmission

capacity interruptions in setting its estimated Monthly Net Energy amounts.

- B. **Seasonality:** As an incentive for United Materials to deliver energy to the Company during times when it is of greater value to Idaho Power, the published avoided cost rate is “seasonalized.” The seasons generally correspond to the months in which Idaho Power has identified actual energy needs and periods of higher demand. Reference Agreement Sections 6.2 and 7.1.
- C. **Firm Energy Deliveries:** The United Materials Project is located outside of Idaho Power’s service territory. Northwestern Energy, the Transmitting Entity for this project, has agreed, on an hourly basis, to firm all energy deliveries from United Materials to Idaho Power and to other scheduling requirements as specified in Agreement Section 10.
- D. **Environmental Attributes:** As reflected in Agreement Article 8, Idaho Power notes its intention to file a Petition for Declaratory Order with the Commission in regards to the “Environmental Attributes.” Reference Case No. IPC-E-04-2. Idaho Power is seeking a Commission ruling concerning whether the Environmental Attributes associated with a QF project are owned by the project or the utility at the time a utility purchases electricity from a QF project. The Commission’s final Order will be included and become an integral part of the Agreement. United Materials reserves the right to cancel the Agreement within 30 days of the Commission’s final Order regarding Idaho Power’s Petition.

Agreement Section 22 provides that the Agreement will not become effective until the Commission has approved all of the Agreement’s terms and conditions and declared that all payments Idaho Power makes for purchases of energy to United Materials will be allowed as prudently incurred expenses for ratemaking purposes. Should the Commission approve the Agreement, Idaho Power intends to consider the effective date of the Agreement to be January 6, 2004. United Materials has estimated an operation date of December 31, 2004. As reflected in the Company’s Application, the Agreement contains non-levelized published avoided cost rates in conformity with applicable Commission Orders. Because the project is located outside the Idaho Power service territory, no interconnection charges or monthly operation and maintenance charges under Schedule 72 will be assessed.

As reflected in Agreement Section 21.3 United Materials may terminate the Agreement on 60 days prior written notice if (1) the Federal Production Tax Credit or other similar economic incentive is not renewed, modified or created in a manner that enables United

Materials to participate in these economic incentives in the same manner as if the Project was commercially online as of the date of the Agreement, (2) and United Materials has not begun construction of the Project. Once construction of the Project has begun, United Materials may not terminate the Agreement as specified in Section 21.3.

Pursuant to Agreement Section 21.2, Idaho Power may terminate the Agreement on 60 days prior written notice if (1) existing Idaho law is modified to allow persons or entities other than Idaho Power to sell electric capacity or energy at retail in Idaho Power's exclusive service territory, and (2) such change in law results in Idaho Power being unable to fully recover in its retail revenue requirement all costs attributed to this Agreement.

COMMISSION DECISION:

Staff recommends that the Company's Application in Case No. IPC-E-04-1 be processed pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. Does the Commission agree?

Scott D. Woodbury

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