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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 )**  
**OF AN AGREEMENT FOR SALE AND )**  
**PURCHASE OF ELECTRIC ENERGY )**  
**BETWEEN IDAHO POWER COMPANY AND )**  
**THE J.R. SIMPLOT COMPANY. )**  
**\_\_\_\_\_ )**  
**CASE NO. IPC-E-04-7**  
**COMMENTS OF THE**  
**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 23, 2004 submits the following comments.

**BACKGROUND**

On March 5, 2004, 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 and JR Simplot Company (Simplot) dated February 19, 2004.

Simplot currently owns, operates and maintains a 15.9 MW cogeneration facility (Project) at its industrial site near Pocatello, Idaho. The Project is a qualified cogeneration facility under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 (PURPA). Attachment 1

shows graphically the actual historical generation of the Project, along with contractual allowed base generation by month.

As reflected in the Company's Application, the Simplot Project is currently interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility (QF) in accordance with a Firm Energy Sales Agreement dated January 24, 1991 (Order No. 23552) and as subsequently amended on November 30, 1993 (Order No. 25353) and February 23, 2001 (Order No. 28730), and by two letter agreements signed by the Parties that extended the term of the 1991 Agreement to February 29, 2004. Although copies of the letter extensions were forwarded to the Commission, the Company admits that it did not make a separate filing requesting approval. The Company as part of its filing in this case requests approval of purchases made under the two letter extensions. The rate paid for energy during the months of January and February 2004 was the same rate specified in the 1991 Agreement for December 2003 (0.04201¢ per kWh) and is less than the current published avoided cost rates for those same months.

Under the terms of the submitted Agreement, Simplot has elected to contract with Idaho Power for a 10-year term. The Agreement contains non-levelized published avoided cost rates as currently established by the Commission for energy deliveries less than 10 MW (Order No. 29391) and a negotiated price for energy over 10 MW.

The submitted Agreement, the Company states, is similar in many respects to recent QF contracts between Idaho Power and Tiber Montana LLC (IPC-E-03-1), United Materials of Great Falls, Inc. (IPC-E-04-1) and Renewable Energy of Idaho, Inc. (IPC-E-04-5).

As reflected in the Agreement, the Company has defined energy delivered to Idaho Power exceeding 10,000 kW in a single hour as "Optional Energy." Optional energy is identified through hourly metering. Because Simplot has made no firm commitments as to the delivery of this optional energy, the energy delivered to Idaho Power is considered to be non-firm energy. As non-firm energy, Idaho Power and Simplot have agreed the value of this energy to be the variable current market-based price as defined in Agreement ¶ 1.11.

As incentive for Simplot to deliver energy to the Company during times when it is of greater value to Idaho Power, the Company has refined the seasonalization of rates to coincide to the months in which Idaho Power has identified actual energy needs and periods of higher demands. Reference Agreement Section 6.2.

Agreement Section 24 provides that the Agreement will not become effective until the Commission has approved without change all the Agreement terms and conditions and declared that all payments that Idaho Power makes for purchases of energy to Simplot 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 Simplot Agreement to be March 1, 2004. As reflected in the Company's Application, the Agreement contains non-levelized published avoided cost rates in conformity with applicable Commission Orders.

## **ANALYSIS**

### **Commission-Approved Methodology for Rates for Projects Larger Than 10 MW**

Staff opposes approval of this Agreement because the rates contained in the Agreement have not been determined in accordance with the approved Commission methodology for projects 10 MW and larger. Staff expressed opposition to another recently submitted contract for similar reasons. See IPC-E-04-05, Renewable Energy of Idaho, Inc.

Idaho Power states in its Application that the Simplot Agreement is similar in many respects to the Tiber Montana, LLC contract that the Commission approved on April 28, 2003 in Order No. 29232. While the contracts are indeed similar, Staff believes there are differences between the projects that clearly distinguish them. The Tiber project is at the site of an existing dam, and the project has neither history nor capability to generate more than 7.5 MW. Moreover, Tiber has a transmission firming agreement with Northwestern Energy whereby Northwestern will only deliver a flat 7 MW to Idaho Power. Simplot, on the other hand, has both the generation capability and the history of regularly exceeding 10 MW of capacity. As shown in Attachment 1, generation from the Project regularly exceeded 10 MW; this despite seller's expressed intention in the 1991 Firm Energy Sales Agreement to deliver estimated monthly net energy amounts below 10 MW. Similarly, the submitted Agreement does not preclude generation exceeding 10 MW and in fact establishes market pricing for all energy exceeding 10,000 kWh in any hour. For these reasons, Staff believes it is appropriate to consider the proposed Agreement to be larger than 10 MW, thus subject to the approved methodology for projects larger than 10 MW.

In Case No. IPC-E-95-9, a Settlement Stipulation was approved by the Commission and included as part of its final Order. See Order No. 26576 and the Settlement Stipulation included as Attachment No. 2. The Settlement Stipulation describes in detail how avoided cost rates are to be

determined for projects 1 MW and larger. In later Order Nos. 29029 and 29069, the Commission raised the threshold for published avoided cost rates from 1 MW to 10 MW; therefore, since then Staff has assumed that the methodology described in the Settlement Stipulation is to be used for all projects 10 MW and larger.

The Settlement Stipulation approved by the Commission in Order No. 26576 was signed by Idaho Power, thus indicating Idaho Power's endorsement of the methodology. In fact, Case No. IPC-E-95-9 was initiated by Idaho Power's own Application for an Integrated Resource Plan (IRP)-based methodology to be used as a new basis for avoided cost rate negotiations with QFs larger than 1 MW. Staff's recollection is that Idaho Power was more instrumental than any other party in developing the details of the methodology. The IRP-based methodology was chosen specifically because the parties felt that it more accurately reflected the value of a large QF to the utility and was more appropriate than the SAR-based method for large projects and long-term contracts. The risk of overpayment or underpayment was believed to be less under the IRP-based methodology, especially for long-term contracts.

Basically the IRP-based methodology requires that the utility make two runs of its power supply model – one using assumptions consistent with its most recent IRP, and a second with the proposed QF included as a no-cost resource. The difference in net power supply costs computed by the model over the term of the proposed contract represents the value of the QF to the utility and is supposed to serve as the basis for establishing an avoided cost rate for the proposed QF. The methodology is intended to capture and fairly value the different individual generation characteristics of proposed projects.

Since the methodology was adopted, it has only been utilized once to establish a rate for a project larger than 10 MW because only one contract larger than 10 MW has been sought by a project owner in the interim (except for the noted recent exception of Renewable Energy of Idaho, Inc). In Case AVU-E-02-08, Potlatch and Avista negotiated an agreement with rates based on the methodology for Potlatch's 60 MW QF. Avista used the AURORA model, the same model Idaho Power uses for various purposes including its current rate case and its upcoming 2004 IRP.

In production requests, Staff asked Idaho Power to use the IRP-based methodology as prescribed in the Settlement Stipulation to compute rates for the Simplot contract. In its response,

the Company stated:

Idaho Power no longer uses the forecast model upon which the methodology described in the Settlement Stipulation referenced in this request was based and the Company does not believe that using the AURORA model to calculate avoided costs for a 20-year contract is appropriate. In addition, the AURORA forecast model is currently being extensively updated for use in the 2004 IRP and is simply not available to perform the requested analysis in the near future.

Staff contends that no particular model was specified when the Settlement Stipulation was adopted. Various models are available and capable of performing the necessary computations. In fact, for the recently approved Potlatch QF contract, Avista used AURORA in accordance with the methodology described in the Settlement Stipulation. Idaho Power possesses AURORA, has used it in the past, and used it in its present rate case to compute normalized power supply costs. The Company's states that it intends to use AURORA in developing its 2004 IRP, which is due to be submitted to the Commission in approximately two months. In order to meet the deadline, Staff believes Idaho Power should be using AURORA now; therefore, Staff cannot understand why AURORA is not available now for avoided cost computations and cannot be used to compute rates for this contract.

Idaho Power filed reply comments on April 15, 2004 in Case No. IPC-E-04-05, Renewable Energy of Idaho. In its comments, the Company acknowledges that Order No. 26576, the Order that spells out the avoided cost methodology to be used to compute rates for projects larger than 10 MW, remains in effect until it is changed by Commission order. The Company also admits that it did not follow the prescribed methodology in the Order and offers reasons why the Order was not followed. Idaho Power cites its lack of experience in using AURORA, in addition to problems it has experienced in using the model that cast doubt on the results it expects to obtain. Idaho Power does not indicate that it even made an attempt to use the model to compute rates. Nevertheless, the Company expresses its belief that AURORA can successfully provide accurate analysis for IRP purposes and seeks Commission approval of normalized power supply costs determined using AURORA for its ongoing rate case. However, illogically, it has no confidence that AURORA would produce accurate pricing and cost data if it were used to compute avoided cost rates for PURPA QFs. This explanation confounds Staff.

In its reply comments in Case No. IPC-E-04-5, Idaho Power also notes the expediency with which it had to negotiate the Renewable Energy of Idaho contract and the difficulty in correcting

problems with AURORA and in developing experience in using the model. Staff assumes such expediency was also an issue in developing the Simplot contract, since the prior Simplot contract expired at the end of 2003. Staff agrees that it would have been punitive to both Simplot and Renewable Energy to delay their contracts, yet Staff believes both contracts have been in negotiation for many months. Staff cannot accept Idaho Power's argument that the AURORA model is unavailable for use for other purposes until the Company completes its 2004 IRP.

Despite its excuses, the fact remains that Idaho Power has still not computed rates using its IRP model in accordance with the methodology in Order No. 26576. Staff simply cannot accept the Company's contention that AURORA will produce inaccurate results when those results have yet to be produced and evaluated.

### **Idaho Power's Method for Establishing Prices in This Contract**

Rather than following the methodology prescribed in the Settlement Stipulation, Idaho Power offered the non-levelized published avoided cost rate for the first 10 MW and offered an Optional Energy Rate for generation above 10 MW. The Optional Energy Rate is a market-based price equal to 85% of the weighted average of the daily on-peak and off-peak Dow Jones Mid-C Index prices for non-firm energy.

The contract prices developed by Idaho Power for this contract are not necessarily unreasonable. In many respects, the rates included in this proposed Agreement are structured similarly to the rates in the 1991 Agreement. However, the 1991 Agreement pre-dated development of the IRP-based methodology, which was not developed until 1996. The proposed Agreement is clearly presented as a new contract and not as an amendment to an existing contract. As a new contract, it must comport with all Commission orders currently in effect.

### **Letter Extension Agreements**

Idaho Power requests Commission approval of energy purchased from Simplot in January and February 2004 pursuant to letter agreements dated December 22, 2003 and January 30, 2004. The letters reflect that the expiration of the Commission approved agreement (January 24, 1991) and associated amendments (Nov. 30, 1993; Feb. 23, 2001) was December 31, 2003. The Company recites in the extension letters that the parties were engaged in diligent contract negotiation for a new QF firm purchase power agreement and by letter agreements the parties were extending the expiration date of the Commission approved agreement to February 29, 2004. The extension

agreements were submitted under the signature of Randy Allphin, Contract Administrator for Idaho Power.

Staff contends that extension of the expiring contract was a significant change or modification that required Commission approval. No Commission approval of the extension agreement was requested. As part of its unified regulatory scheme in implementing PURPA, the Commission has long required that signed power purchase contracts be presented to it for review, approval and lock-in of avoided cost rates. The parties cannot by letter agreement deprive the Commission of its ratemaking authority under PURPA and *Idaho Code* § 61-902 or relieve the utility of its obligations under *Idaho Code* § 61-307.

As the Company neither sought nor obtained Commission approval of the contract extension periods, Staff recommends that the purchases of energy in January and February 2004 be treated for ratemaking purposes as a voluntary purchase of power and not a purchase mandated under PURPA.

## **CONCLUSIONS**

The simple fact is that Idaho Power failed to follow Commission orders in developing an avoided cost rate. It is presumptuous for Idaho Power to dismiss the Commission-approved methodology as no longer valid without even making an attempt to compute rates in accordance with the methodology. If rates had been computed in accordance with the methodology then judged unreasonable, Staff might agree that an alternate method was warranted. That was not the case here, however. Idaho Power has provided no credible reason for not following Commission orders. Consequently, Staff is unable to recommend that the proposed contract be approved.

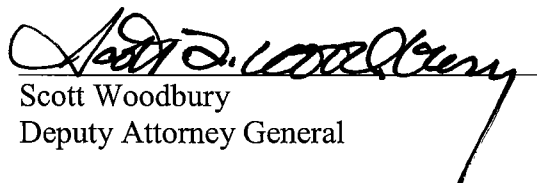
If the Commission refuses to approve the Agreement, Simplot might be forced to suspend its generation. Simplot has been generating power and selling it to Idaho Power for more than 13 years and Staff assumes Simplot desires to continue to sell its generation uninterrupted. So that Simplot can continue to sell its generation and not be unfairly penalized, Staff proposes that, for now, Idaho Power be required to purchase Simplot's generation under the rates, terms and conditions contained in the proposed Agreement. For ratemaking purposes however, until new rates can be computed in accordance with the prescribed avoided cost methodology, Staff recommends that the purchase be treated as a voluntary purchase of power and not a purchase mandated under PURPA.

## RECOMMENDATIONS

Because Idaho Power has failed to follow the Commission's Orders regarding how avoided cost rates are to be determined for QFs 10 MW and larger, Staff recommends that the submitted Agreement be disapproved. Staff recommends that Idaho Power be directed to compute an avoided cost rate in accordance with the prescribed methodology, resume contract negotiations with Simplot, and submit a revised agreement for Commission consideration.

Staff recommends that purchases of power made under the two letter extensions for the months of January and February of 2004 be treated as a voluntary purchase of power and not a purchase mandated under PURPA. Beginning in March 2004 and until a new contract acceptable to the Commission is filed, Staff recommends the Commission order Idaho Power to continue to pay Simplot for generation under the rates, terms and conditions contained in the proposed Agreement. For ratemaking purposes however, until new rates can be computed in accordance with the prescribed methodology, Staff recommends that the purchase be treated as a voluntary purchase of power and not a purchase mandated under PURPA.

Respectively submitted this 16<sup>th</sup> day of April 2004.

  
Scott Woodbury  
Deputy Attorney General

Technical Staff: Rick Sterling

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