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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

U.S. GEOTHERMAL, INC., an Idaho corporation, Complainant, vs. IDAHO POWER COMPANY, an Idaho corporation, Respondent.	Case No. IPC-E-04-08 **POST-HEARING BRIEF OF U.S. GEOTHERMAL**
BOB LEWANDOWSKI and MARK SCHROEDER, Complainants, vs. IDAHO POWER COMPANY, an Idaho corporation, Respondent.	Case No. IPC-E-04-10

In their responses to the Complaints in this case, both Idaho Power and the Commission Staff have proposed radical alterations to more than two decades of uninterrupted Commission policy regarding the payment of avoided cost rates to Qualifying Facilities ("QFs"). They would

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do so by penalizing QFs that do not meet arbitrary operational performance standards. Under Idaho Power's proposal, QFs that fail to operate within 90% to 110% of monthly production estimates submitted two years in advance would receive only Mid-C energy prices for surplus sales, and would be required to pay a penalty capped at 150% of Mid-C energy prices for shortfalls below the 90% threshold. The Staff embraces this concept, but would expand the brackets to 80% and 120% and shorten the lead-time for operating estimates to six months.

As the Complainants pointed out during the hearings, both of these proposals are improper collateral attacks on the Commission's recent order establishing PURPA rates and contract terms. Furthermore, both proposals are premised on a gross mischaracterization of the Commission's use of the terms "firm" and "non-firm" in PURPA orders as well as a glaring misunderstanding of the "how" and "why" of avoided cost rates.

The basic fallacy in the Idaho Power and Staff approach is laid bare by the very order Staff cites as authority for its proposal. Order No. 15746, issued on August 8, 1980 in Case No. P-300-12, established the general framework for determining avoided costs and QF rates. Under the PURPA rules, a QF has the option "to provide energy as the qualifying facility determines such energy to be available. . ." or "to provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term. . . ." 40 C.F.R. § 292.304(d). The Commission characterized these two options as follows:

> Section 292.304(d) of the FERC rules provide that qualifying facilities have the option of selling power on an "as available" basis or pursuant to a "legally enforceable obligation" to deliver. This terminology corresponds to the familiar distinction between non-firm power sales and firm power sales.

Order No. 15746 at 13.

With respect to those QFs that opt for the first option to sell "as available" energy without any contractual obligation on their part, these sales are "non-firm" and therefore not entitle to full avoided cost rates because "such sales do not permit the utility to avoid any 'capacity' costs at all and must therefore be priced at the utility system's avoided incremental cost of 'energy'. . . ." Order No. 15746 at 14. At Idaho Power's urging, the Commission accepted the proposal to price these "purchases of non-firm energy" at market rates, *i.e.*,

> [1] either the price [Idaho Power] is able to sell such energy for if it is not needed on Idaho Power Company's system, [2] or the price Idaho Power Company must pay for energy when it is needed to supply the requirements of Idaho Power Company.

Order No. 15746 at 19.

But the Commission went on to reject utility arguments that energy only prices should also be applied to "firm" QF sales pursuant to legally enforceable obligations, and held that the prices for these types of contract must include a component for avoided capacity costs in addition to the avoided energy costs. The Commission further dismissed Utah Power & Light's contention that capacity costs should be included only for projects equivalent in size and availability factor to a specific type of utility plant—in UP&L's case, a base load coal fired plant. In doing so, the Commission quoted with approval Dr. John Willmorth's observation that "'with long term contracts, there is no 'threshold' amount of power from qualifying facilities which is needed before avoided capacity rates are paid.'" *Id.* at 22.

The basis for this holding was the finding that the aggregate output of QF facilities would make a "'meaningful contribution to system planning and would thus be deserving of capacity credits.'"[1] *Id.* This finding has proved, with the passage of time, to be both prescient and accurate. Kip Runyan's evaluation of the comparative performance of CSPP resources and Idaho Power's resources conclusively demonstrates that, in terms of "firmness" of power deliveries,

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[1] Closing quotation marks for this sentence were inadvertently omitted in the Order's text. I have placed them where it appears from the context they belong.

> the CSPP facilities have operated as well as, and arguably better than, utility resources. A utility trying to balance loads and resources knows it can count on the CSPP portfolio to produce base load capacity and energy in much the same manner as the utility's own base load resources.

Rebuttal Testimony of Kip Runyan, p. 10, l. 9-11.

Notwithstanding this evidence, both Idaho Power and the Commission Staff argue for an approach that was explicitly rejected in Order No. 15746. Both argue that, in order to receive full avoided cost rates, each individual QF should be required to exhibit a roughly equivalent degree of firmness as a single selected utility resource. In Idaho Power's case, the resource selected for comparison purposes is a wholesale market purchase. Thus Mr. Gale argues that

> The appropriate comparison is between a firm energy purchase from a QF and a firm energy purchase from another creditworthy wholesale market participant . . . By including the firming provisions in the QF contracts, the Company is attempting to more closely align the firmness of energy purchases under the QF contracts with firm energy purchases it makes every day in the wholesale market.

Gale Direct Testimony, P.22, L. 9 through P.23, L. 1. For its part, the Staff argues that requiring QFs to meet the assumed 92 percent capacity factor of the Surrogate Avoided Resource ("SAR") makes "some theoretical sense," although the Staff proposes a somewhat lesser standard in recognition of the fact that many potential projects could not meet the SAR's capacity assumed capacity factor. Sterling Direct Testimony, P. 17, L. 1-16.

The fallacy in this approach can be illustrated with another quote from Order No. 15746, again quoting Dr. Willmorth with approval:

> When power from a qualifying facility is purchased under a long-term contract, avoidance of any increment of capacity is equivalent to the deferral for shorter time periods of an entire series of the Company's future generating units planned to come on-line within the term of the contract.

Order No. 15746 at 22. Thus, the costs a QF enables a utility to avoid are those associated with the actual portfolio of resources to be acquired within the life of the QF contract. In Idaho

Power's case, its 2004 Integrated Resource Plan ("IRP") indicates that it intends to acquire the following resources within the next 10 years:

-- 76 MW Demand Response Programs (DSM)

-- 48 MW Energy Efficiency Programs (DSM)

-- 350 MW Wind-Powered Generation

-- 100 MW Geothermal-Powered Generation

-- 48 MW Combined Heat and Power at Customer Facilities

-- 88 MW Simple-Cycle Natural Gas Fired Combustion Turbines

-- 62 MW Combustion Turbine, Distributed Generation, or Market Purchases

-- 500 MW Coal-Fired Generation

IRP at 2.

Each of these resources has its own risk characteristics and advantages and disadvantages, including varying degrees of operational availability. *See* IRP at 52-61. It is absolutely improper to pick out a single resource with a high capacity factor from this diversified portfolio, and then require each and every QF to meet this capacity factor in order to receive full avoided costs. This is true even if the comparison is to the combined cycle SAR that is, as its name implies, merely a <u>surrogate</u> for the resources contained within a diversified portfolio and their actual avoided costs.[2] The fact that the SAR is used as a shortcut to the estimate of <u>avoided costs</u> from a diversified portfolio does not suggest that either the utility's actual resource portfolio or a similarly diversified portfolio of QFs must match the operating characteristics of the SAR.[3] In fact, if Idaho Power follows the resource acquisition strategy outlined in its IRP, it

[2] The first definition of 'surrogate" in The Concise Oxford Dictionary is "a substitute."
[3] Whether real world combined cycle units achieve the 92% capacity factor assumed for the SAR is yet to be demonstrated by Idaho utilities, and the assumption may well prove overly optimistic if the "high fuel price volatility" of natural gas continues. *See* IRP at 53.

is abundantly clear that many of the resources it intends to acquire (and that will be avoided by CSPP acquisitions) <u>will not</u> meet the "firmness" standards proposed by either Idaho Power or the Staff.

In summary, Idaho Power's and the Commission Staff's debate about the "firmness" of QF purchases is based on a fundamental misapplication of the Commission's orders and language. Idaho Power and the Staff misread the Commission's reference to "firm" <u>legal obligations</u> as an attempt to prescribe firm QF <u>operational characteristics</u>. This was never the Commission's intention, and the proof is that the Commission has approved contracts for dozens of small hydroelectric QF projects, many of which are, like Idaho Power's own hydroelectric facilities, subject to enormous variations in generating capability. *See* Exhibit 58.

For QF purposes, a plant's output is "firm" when it is made available to the utility pursuant to a "legally enforceable obligation." At that point, the QF is providing a service that is functionally equivalent to the utility's avoided "firm" resources that also have widely varying capacity factors. Nothing more is required for the QF to be entitled to full avoided cost rates for the entirety of its output.

RESPECTFULLY SUBMITTED this 17th day of September 2004.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

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