Glenn Ikemoto
Energy Vision, LLC
672 Blair Avenue
Piedmont, California 94611
Tel: 510-655-7600
Fax: 510-217-2239
glenni@pacbell.net

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-04-8**
BOB LEWANDOWSKI and MARK SCHROEDER, **Complainant** **vs** **IDAHO POWER COMPANY, AN IDAHO CORPORATION,** **Respondent**	**CASE NO. IPC-E-04-10** **PETITION FOR RECONSIDERATION BY ENERGY VISION, LLC**

INTRODUCTION AND BACKGROUND

Energy Vision, LLC ("EnVision") develops, finances and invests in renewable energy projects throughout the world. Our present interest in the USA is to develop small renewable energy projects with high levels of local and landowner participation. We are also presently very active in Europe. The members of EnVision and our partners have developed, acquired and/or arranged for the financing of over $1 billion of wind,

solar, demand-side management, biomass and cogeneration facilities in the USA and internationally.

We have followed the progress of the above captioned matters closely, as we have traditionally viewed the Idaho approach to implementation of PURPA to be quite progressive and balanced. Unfortunately, we recognized that the contract forms being offered by the utilities were un-financable due to the issues addressed in the subject proceedings. As a result of the progress being made in those proceedings, we began working with several Idaho farmers to help them realize the commercial potential of their wind resources. We are also interested in developing biogas projects in the state. Although we did not participate in the underlying complaint action, we are directly impacted by the Commission's ruling in that we believe that, as a result of that ruling, the projects we are working on will remain unachievable.

We understand that the Commission's rules provide that any person may petition for reconsideration on the grounds that the Commission's decision is "unreasonable, unlawful, erroneous or not in conformity with the law." The Commission's rules also provide that a petition for reconsideration must contain a statement "of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." See Idaho Commission Rules of Procedure at Rule No. 331.01.

For the following reasons, EnVision respectfully petitions for reconsideration on the basis that the Commission's ruling is unreasonable and not in conformity with the PURPA requirement that states actively encourage the development of QF power in furtherance of the Federal Government's goal of promoting energy independence. If reconsideration is granted EnVision will provide evidence and argument based on the following petition.

1. Incentives Are Reversed

In its decision, the Commission has expressed its desire to improve the reliability of QF delivery forecasts. However, the mechanism it has created provides incentives which are the opposite of what they should be. There are two fact circumstances here: market prices are higher than published prices, or they are lower.

When market prices are higher, the QF faces no penalty because it will receive published prices anyway. It has no incentive to forecast more accurately or

make extraordinary efforts to meet its forecast. However, this is just when the ratepayers would want more QF energy since it is cheaper.

When market prices are lower, the QF faces a potentially severe penalty and would act to increase production, if possible. However, this is exactly when ratepayers would prefer to reduce QF deliveries, because it is more expensive. So we have a situation where the QF has an incentive is to increase deliveries only when the ratepayers would want them reduced. Such faulty price signals always lead to faulty economic decisions.

2. Risk Considerations

In this proceeding, the utilities make the point that many QFs do not have the same operational flexibility as conventional utility resources. Therefore, some adjustment should be made to either avoided costs or the FESA (Firm Energy Sales Agreement) to account for this. Essentially, the utilities say that uncertainty ultimately equals cost. This is in fact correct, as is clearly demonstrated in virtually all markets. All mechanisms that reduce risk (hedging) have a premium. Simply put, reducing risk is worth something.

However, it is unfair to focus only on risks where the QFs are disadvantaged. Compared to utility owned generation or the surrogate avoided resource (SAR), QFs have many risk advantages. None of these has been accounted for in the published rates. For example:

1. Fuel Costs. The published prices are completely fixed while the ratepayers are exposed to the risk that natural gas for the SAR will cost something other than the forecast. As we have seen, natural gas prices are extremely volatile. The forecast of gas prices do not consider the cost of achieving price certainty. They simply forecast short term market prices. A simple corollary is a fixed interest rate loan. The fixed rates are determined by adding a premium to a forecast of short term rates.

2. Construction Costs. Cost overruns and excess inflation are also not explicitly accounted for in the SAR. Do utilities guarantee the final costs or only prudence?

3. Regulatory Risks. The SAR will be exposed to a number of regulatory risks during its life. It produces a toxic product. The history of such products, like tobacco, are that societal costs are increasingly incorporated into the direct costs of the product through regulation, taxes, fees or litigation settlements. Over such a long operating horizon, the plant will undoubtedly be exposed to potential additional costs for new

greenhouse gas regulations, increased air or water pollution controls or other environmental oversight. These risks are clear and belong to the ratepayers, but they are not included in avoided cost calculations.

4. Resource Diversity. There is always a benefit from diversification, whether it is a financial portfolio or a generation mix. QFs receive no credit for this portfolio effect.

If we are to account for risk, it should be all risks. The long term and planning risks far outweigh the operational risks addressed by the 90/110 band. In short, if we account for avoided risks (as well as avoided costs), the published prices are very low. If we ignore long term risks, it seems reasonable to ignore the much smaller operational risk of production variances. Of all risks, the ultimate cost of fossil fuels is by far the largest. It swamps all other considerations. While it is implicitly assumed that the SAR's fuel forecast is fair (50% chance of being too high or too low) this is not the same as price certainty. Risk is generally considered to be the variance of a particular result from the average. The price variance of the FESA is zero. The variance of the fuel price forecast is huge. This dwarfs the production variance that the 90/110 rule tries to address.

In addition, the production risk is unbalanced for QFs. The risk of having revenues go to zero cannot be fully offset by higher than planned revenues because of the absolute 10 MW cap on paid deliveries and the "lesser of" pricing mechanism.

3. The Cure is Worse.

In its order, the Commission rightfully recognized that Idaho Power's proposed penalty could result in QFs delivering the bulk of their commitment and still owe the utility money. This mechanism is simply un-financable and resulted in the subject proceeding.

Unfortunately the Commission's approach, which fixes the problem of wiping out revenue, introduces uncapped market risk. This is also un-financable. PURPA was specifically enacted to counteract the market power of utilities. In competitive markets, suppliers have a number of mechanisms available to offset unanticipated production shortfalls. These include insurance, backup agreements, alternate buyers and hedging strategies. Such tools do not fully exist in regulated markets. The Commission's order inadvertently exposes QFs to the full force of the utilities' market power with no way of protecting themselves. Under such circumstances, banks will not lend. To a certain

extent, the Commission's approach extends the "perceived penalty" from the shortfall in energy to all of the energy produced – at least in the minds of bankers.

A fundamental bank analysis is the downside study. In such a study, the bank assumes a project will only produce 70% - 80% of its planned output. They want to be certain the bank will recover its loan under such a scenario and is one of the key factors in making a lending commitment. Under the Commission's decision, such an analysis would result in 100% market risk, rendering the project un-financable. This is true even if the project can re-forecast its deliveries more frequently, because each month's variability can exceed 10% even if the average is less than 10%. Equity investors accept average risks while lenders assume downside risks. Replacing debt funds with equity will destroy a project's economics.

4. Fairness

A classic measure of fairness is whether one party would take the deal being offered to the other. No utility would take this performance deal. Let us use the example of a utility owned hydro project versus a wind project. Would a utility accept any penalties for making less than 90% of its planned monthly energy deliveries from its hydro projects (especially if they could not fully recover the penalties in a wet year)? Like hydro, wind resources run in cycles. There are years with wind droughts and years with abundance. Unlike the utility, the wind projects will face penalties during droughts and cannot recover them during times of abundance because of the 10 MW limit and the "lesser of" pricing mechanism.

As mentioned earlier, the production variance is nothing compared to price variance. No utility would build the SAR if they would be penalized for month-to-month variances between their actual fuel costs and their projections. However, the effect on the ratepayer is the same, whether the variance is caused by production or fuel price.

The risks of monthly production and price variances always remain with the ratepayer because they are the only party with enough credit capacity. These variances can be hedged at a cost, and that cost is <u>not</u> included in published rates. In fact, that cost is so large, that utilities, in agreement with their commissions, don't even try. It isn't worth it. So why burden QFs with this requirement? Variations in generation and customer demand are part of the utilities' business environment. Balancing loads and resources, which both have probabilistic characteristics, is part of their job.

5. Facts Not In Evidence

As noted above, selecting a penalty linked solely to market prices raises important and complex issues. These issues were not specifically addressed in the subject proceedings. Consequently, the record in those proceedings is inadequate for assessing the impacts of such a policy. As it stands, the decision will negate the Commission's goal of increasing the development of cost-effective renewable energy in Idaho. Power contracts can either be financed or not. Under the current decision, the new contracts will be just as ineffective as the contested versions. Surely, such a dire outcome merits a more fully developed record upon which the Commission can base its decision.

In our opinion, this is the last contractual issue, at least for wind energy, that needs to be fixed (assuming utilities don't start using transmission access as an obstruction). It is the last institutional barrier blocking otherwise good projects. From here, renewable projects must still have economic merit, environmental acceptability and community support in order to be realized. But at least they won't be denied a fair chance because of an artificial barrier-to-entry created by monopolies. The benefits of renewable energy, even at avoided cost, far outweigh the potential cost of delivery variances. This issue simply can't be sufficient reason for stopping any QF's development.

6. Alternatives

Staff testified that QFs are already meeting 71% of their commitments without penalties. The goal of introducing penalties is to increase this to 90%. Can this extra 20% possibly be worth crippling renewable energy development in Idaho? As stated previously, the impact of monthly production risk is miniscule compared to the risks that are avoided by purchasing QF energy.

Given the highly favorable risk tradeoff, we believe the fairest solution is to eliminate the 90/110 band. However, if the Commission wishes to proceed with penalties, there are a number of alternatives that can accomplish the Commission's goals more effectively.

1. Forecasting Fees. Producing a monthly forecast of wind output with 90% accuracy is an expensive undertaking. It would be prohibitively

expensive for small projects. However, developing wind energy is an important economic option for Idaho's farmers and ranchers. QFs should be given an option of having a small per kWh fee deducted from their payments in order to fund the development of centralized utility forecasting tools and utility generated projections. These tools would probably utilize existing load forecasting techniques and data sources. By paying this fee, the projects would be exempt from the 90/110 requirement. This approach has the benefit of developing the forecasting expertise at the real end user, the utility. This mechanism also has the logic that the value of forecast accuracy increases as the amount of energy increases.

2. Published Price Penalty. The real problem with the Commission's approach is that it introduces market risks in an uncompetitive market. If there must be a penalty, it is far better to link it solely to the published rates. For example, if a project failed to meet it's 90% threshold, it would only receive 98% of it's published prices for that month. In using a penalty mechanism, it is important to provide caps. For example, the penalty should only be allowed in a limited number of critical months. There should also be an annual per kW cap reflecting the fact that the information really isn't that valuable.

3. Expand Force Majeure. Like utility hydro projects, QFs are entirely dependent on the underlying resource. Since utilities' actual delivery performance is excused for the unavailability of resources, the same should apply to QFs. No utility is penalized for low water conditions or the withholding of fuel supplies. If the lack of resource is considered a Force Majeure, then the primary measure of prudence is mechanical availability. In this case, a 90% standard is reasonable.

7. Summary

The Commission's decision on the 90/110 band provides price signals which are the opposite of the desired QF performance. It encourages QFs to increase production only when ratepayers want them reduced (even considering the cost of production variance).

Avoided costs are a function of avoided risks. Considering all risks, it is fair to eliminate any operational performance tests. By contracting for QF energy instead of building new power plants, the ratepayers avoid substantially more risks than they incur. Should this trade be viewed as insufficient, there are a number of mechanisms available for mitigating the operational risks of QFs without overly damaging project financing options.

The problem has been created by trying to quantify actual damages when market prices exceed contract prices, while ignoring benefits during those same times (because the projects can only receive the lesser price up to 10 MW) or when the price situation is reversed. This introduces uncapped market risks which are not commercially financable in a monopoly industry. The Commission's decision to shift revenues to market rates was not anticipated during the hearing and the record has not been adequately developed on this point. This issue is critical to QF development and merits further consideration.

If it chooses to improve the credibility of delivery forecasts through the imposition of penalties, the Commission must avoid foreclosing financing options by linking penalties to market prices. In using penalties, it must also recognize the limited value of a 20% improvement over the current voluntary program and provide an annual cap. Since the published prices, by definition, represent a fair deal for ratepayers there is no need to determine actual damages using market rates.

Other alternatives for improving forecasts are to assess a fee on the QFs to fund utility forecasting. This charge would be in lieu of performance standards. Or, it can design a liquidated damages mechanism based on published rates. Or, underperformance caused by the lack of natural resources can be excused, which would convert the standard into a simple mechanical availability test.

CONCLUSION

For all of the foregoing reasons, EnVision respectfully requests the Commission to reconsider its order in the above dockets. In compliance with its Rule 331.03, requiring Petitions for Reconsideration to state "whether the petitioner or cross-petitioner requests reconsideration by evidentiary hearing, written brief, comments or interrogatories", EnVision asks the Commission to initiate evidentiary hearings to consider the various methods suggested above for appropriately allocating risk and addressing the alleged problems Idaho Power claims to have with predicting QF resources.

Submitted this ____ day of December 2004:

By _____
Glenn Ikemoto, Principal
Energy Vision, LLC

CERTIFICATE OF SERVICE

I hereby certify that on 13th day of December 2004, that I caused to be mailed, U.S. Mail postage prepaid to all parties of record in the above captioned matter.

By _____
Glenn Ikemoto
EnVision Systems, LLC

Jean Jewell
Idaho Public Utilities Commission
472 West Washington Street
Post Office Box 83720
Boise, Idaho 83720-0074

( ) U.S. Mail, Postage Prepaid
(X) Hand Delivered
( ) Overnight Mail
( ) Facsimile
( ) Electronic Mail

Scott Woodbury
Deputy Attorney General
Idaho Public Utilities Commission
472 W Washington
Boise, ID 83702

( ) U.S. Mail, Postage Prepaid
(X) Hand Delivered
( ) Overnight Mail
( ) Facsimile
( ) Electronic Mail

Monica B. Moen, Attorney II
Barton L. Kline, Seniior Attorney
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
bkline@idahopower.com
mmoen@idahopower.com

( ) U.S. Mail, Postage Prepaid
(X) Hand Delivered
( ) Overnight Mail
( ) Facsimile
( ) Electronic Mail

John Prescott
Vice-President – Power Supply
Idaho Power Company
Post Office Box 70
Boise, Idaho 83707-0070
jprescott@idahopower.com

( ) U.S. Mail, Postage Prepaid
(X) Hand Delivered
( ) Overnight Mail
( ) Facsimile
( ) Electronic Mail

James F. Fell
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland Oregon 97204

( ) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
(X) Facsimile
( ) Electronic Mail

Daniel Kunz, President U.S. Geothermal 1509 Tyrell Lane Boise, Idaho 83706 dglaspey@usgeothermal.com	( ) U.S. Mail, Postage Prepaid (X) Hand Delivered ( ) Overnight Mail ( ) Facsimile ( ) Electronic Mail
Bob Lively PacifiCorp One Utah Center, 23rd Floor 201 S. Main Street Salt Lake City, UT 84140	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (X) Facsimile ( ) Electronic Mail
R. Blair Strong Paine, Hamblen, Coffin, Brooke & Miller LLP 717 W. Sprague Ave, Ste 1200 Spokane WA 99201-3505	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (X) Facsimile ( ) Electronic Mail
Clint Kalich Manager of Resource Planning & Analysis Avista Corporation – MSC-7 PO Box 3727 Spokane WA 99220-3727	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (X) Facsimile ( ) Electronic Mail
Conley Ward Givens Pursley LLP PO Box 2720 Boise ID 83701-2720	( ) U.S. Mail, Postage Prepaid (X) Hand Delivered ( ) Overnight Mail ( ) Facsimile ( ) Electronic Mail