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IDAHO PUBLIC
UTILITIES COMMISSION

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 BOB
SCHROEDER,

Complainants,

vs.

IDAHO POWER COMPANY, AN IDAHO
CORPORATION,

Respondent.

CASE NO. IPC-E-04-10

**PACIFICORP'S ANSWER TO
PETITIONS FOR REHEARING**

Pursuant to Rule 331.05 of the Rules of Procedure of the Idaho Public Utilities Commission ("Commission"), PacifiCorp dba Utah Power & Light ("PacifiCorp") respectfully submits the following answer to the petitions for reconsideration filed by Mark Schroeder and Bob Lewandowski (Lewandowski Petition"), Energy Vision, LLC ("EnVision Petition"),

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Renaissance Engineering & Design, LLC (“Renaissance Petition”) and Leroy Jarolimek (“Jarolimek Petition”) with respect to Commission Order No. 29632 (the “Order”).

A. Introduction

The thrust of the petitions for reconsideration is that the monthly 90/110 percent performance band (the “Performance Band”) adopted by the Commission is unreasonable, and further that the pricing structure adopted for shortfall deliveries is not supported by substantial evidence. Both of these contentions are without merit. The Commission’s Order is lawful, reasonable and supported by substantial and competent evidence in the record.

B. Legal Standards

Petitioners seeking reconsideration bear the burden of establishing that the Commission’s decision is unreasonable, unlawful, erroneous or not in conformity with the law. *See* Idaho Commission Rule 331.01. The Commission has broad authority under PURPA to set the rates, terms and conditions of QF purchases. *See* 18 CFR § 292.304. Where the Commission is exercising its ratemaking authority, its legal determinations carry a presumption of validity and must be upheld absent a showing that the Commission has failed to regularly pursue its authority or violated the Constitutional rights of the complaining party. *A.W. Brown, Inc. v. Idaho Power Co.*, 121 Idaho 812 (1992). Under the substantial and competent evidence test, the Commission’s factual findings must be upheld absent strong and persuasive evidence that the Commission abused its discretion. *Utah-Idaho Sugar Mountain Co. v. Intermountain Gas Co.*, 100 Idaho 368, 376 (1979).

C. The Performance Band Adopted by the Commission is Reasonable and Lawful

The Commission’s decision to adopt the Performance Band is well within its legal authority under PURPA as well as its general ratemaking authority. As correctly noted in the

Order, Qualifying Facilities (“QFs”) seeking firm pricing are subject to a “legally enforceable obligation” to deliver energy and capacity in the contracted-for amount. (Order at 13.) For this obligation to have meaning, there must be some consequence associated with the failure of QFs to deliver the contract amount within reasonable parameters. The Performance Band strikes a reasonable balance between the need of utilities for certainty concerning QF deliveries, and the need of intermittent QFs to have a cushion surrounding their monthly delivery commitments.

Petitioners cannot point to any constitutional or legal rights that are violated by the decision to adopt the Performance Band. Instead, they argue that the band is unfair and discriminatory because intermittent resources do not have the same level of output predictability as thermal resources. (*See* Lewandowski Petition at 5.) This argument assumes that a performance band would be appropriate for thermal QFs, but not for intermittent resources. The problem with this argument is that the nature of the resource, not the Commission’s decision, puts intermittent and thermal resources on different footing. The Commission’s decision treats all resources fairly by allowing the facility owner to determine the appropriate monthly commitment levels for the resource.

Avoided costs include both capacity and energy components, which should reflect the actual capacity and energy costs avoided by the utility. *See* 16 USC 824a(3)(d). Utilities cannot be said to avoid capacity costs if the QF is permitted to deliver or not at its sole discretion. Some measure of meaningful certainty is required. Further, there are consequences to the utility associated with over- and under-deliveries, such as ramping down lower cost thermal resources and making market purchases and sales. (Order at 20.) As noted by the Commission, to be eligible for firm pricing QFs must assume a “legally enforceable obligation” to deliver in accordance with their commitments. (*Id.*)

The Performance Band is a reasonable, flexible method of ensuring that QFs live up to their delivery commitments. Far from being a penalty, the Performance Band actually *benefits* intermittent resources, which do not have the ability to predict on the hour-to-hour basis typically required for firm pricing, by allowing them to receive firm pricing based on aggregate monthly delivery commitments. Over- and under-deliveries are essentially netted on a monthly basis, rather than being imposed hourly or daily, and are further buffered by the 90/110 band. Additionally, QFs are permitted to periodically update their monthly delivery commitment throughout the contract term, and are excused from delivery in the event of forced outages. (Order at 20-12, 22-23.)

Contrary to Petitioners' assertions, the Performance Band does not force QFs to limit or minimize their output. It merely limits firm, capacity benefits to the level at which the QF owner can reliably predict the monthly output of the facility. As noted in the Order, non-firm pricing is available for QFs that want the ability to deliver on an "as available" basis. (Order at 12.) This remains true even for QFs that elect to make monthly commitments for firm deliveries, as the price paid for deliveries in excess of the Performance Band are at the same rate as is otherwise paid for non-firm deliveries. (Order at 14.)

In sum, the Performance Band adopted by the Commission is a reasonable method of ensuring that capacity benefits paid to QFs bear reasonable proportionality to the delivery commitments by the facility.

D. The Commission's Decision Regarding the Pricing for Shortfall Deliveries is Supported by Substantial and Competent Evidence

Idaho Power proposed that QFs falling below the Performance Band be required to pay an amount equal to 85 percent of the market price for the shortfall, capped at 150 percent of the contract price. (Order at 20.) The other utilities made similar proposals. (Order at 19.) Finding

that Idaho Power's proposal "might have the potential of exacting to heavy a price" the Commission instead adopted a less onerous solution by which all deliveries in a shortfall month are priced at 85 percent of the market price, or the contract price, whichever is less. (*Id.*) Petitioners assert that this finding is not supported by substantial evidence because it differs from any specific remedy proposed by one of the parties. (*See* Lewandowski Petition at 2; EnVision Petition at 6.) This contention is without merit.

In *Industrial Customers of Idaho Power. v. Idaho PUC*, 134 Idaho 285, 293 (1999) the Idaho Supreme Court rejected this reasoning under very similar circumstances. There, the appellants asserted that a Commission decision to adopt a 12 year amortization period was not supported by substantial evidence where the parties had proposed 5, 7 and 24 year periods. The court rejected this argument, noting that the Commission was free to balance the proposals of the parties and rely on its own expertise in fashioning a reasonable solution. *Id.* In this case, the Commission's proposed solution is within the range of the remedies proposed for delivery shortfalls, and is supported by substantial evidence in the record. Petitioner's argument would hold that the Commission may never fashion a remedy other than that specifically proposed by one of the parties.¹ This is not the law in Idaho.

E. Other Issues

Several of the petitioners that did not participate in the underlying proceeding, namely EnVision, Jarolimek and Renaissance, make factual assertions in their petitions that lack foundation in the record below. Such assertions, which principally pertain to the speculative consequences of the Performance Band on financing options for QFs, could have been presented at the hearing and should not be considered at this untimely stage. Further, Petitioner

¹ Notably, Petitioners offer a number of alternate proposals which likewise have no specific foundation in the record. (*See* Lewandowski Petition at 5; EnVision Petition at 6.)

Renaissance proposes that QFs be allowed to sell excess delivery amounts at market, an issue that was outside the scope of the complaints in this proceeding and therefore should not be considered. (*See* Order at 5.)

F. Conclusion

For the above reasons, PacifiCorp respectfully requests that the petitions for reconsideration be denied.

DATED: December 20, 2004.

for 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of December 2004, I caused a true and correct copy of the foregoing PACIFICORP'S ANSWER TO PETITIONS FOR REHEARING to be served by the method indicated below, and addressed to the following:

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