

IDAHO PUBLIC UTILITIES COMMISSION

Case No. IPC-E-04-8, Order No. 29632

November 22, 2004

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Web site: www.puc.state.id.us

Commission settles Idaho Power, small-power producer issues

BOISE – The Idaho Public Utilities Commission today issued an order defining the parameters of contracts between Idaho Power and developers of small-power wind and geothermal projects.

Two operators of wind power projects and another operator of a geothermal project in Cassia County filed complaints with the commission earlier this year alleging Idaho Power is requiring contract terms that are contrary to federal PURPA provisions.

The energy crisis of the late 1970s prompted Congress to pass the Public Utilities Regulatory Policies Act, or PURPA. Its purpose is to encourage the promotion and development of renewable energy technologies as alternatives to burning fossil fuels or the construction of new power plants. PURPA requires large electric utilities like Idaho Power to buy electricity generated by small-power producers who obtain Qualifying Facility status. The rate utilities must pay qualifying facilities (QFs) is set by the state commission. The rate, sometimes called avoided-cost rate, is to be equal to the cost the electric utility avoids if it would have had to generate the power itself or purchase it from another source.

A complaint was filed last March by U.S. Geothermal, which owns the 15-megawatt Raft River Geothermal Power Plant being built in Cassia County. A separate complaint was filed by Bob Lewandowski, operator of a wind project east of Boise, and Mark Schroeder, who is developing a wind project in the Hagerman-Bliss area. The complaints were consolidated by the commission into one case.

Over recent months, the commission has started to receive more applications from wind and geothermal projects seeking to qualify for PURPA rates. These types of projects pose new challenges for the commission, regulated utilities and small-power producers. A major question regarding wind projects in particular is the reliability of their output and if the commission should treat such projects as “firm” sources of power. Firm power sources are more valuable than non-firm, less predictable sources of power. Up until recently, most all PURPA projects in Idaho have been small hydro facilities or co-generation projects at potato processing plants or lumber mills where electricity is produced as a byproduct of the manufacturing process.

Essentially, the small-power producers objected to Idaho Power’s contract provisions in three major areas.

- 1) Idaho Power proposed to pay other than the commission-set posted rates when the output from the complainants’ projects is less than 90 percent or more than 110 percent of projected output. Idaho Power claimed that when output is less than 90 percent it must find power from other sources that can be more expensive. When output is more than 110 percent, Idaho Power said it

might have to sell the energy in the surplus market or reduce output at a more economic generation plant.

The commission, by a 2-1 vote, agreed to the 90-110 performance band, but allowed the developers more opportunities to revise their output estimates thereby allowing them greater likelihood of staying within the performance band. The commission also lessened the severity of the financial penalties QFs would receive for falling outside the performance band.

Commissioner Marsha Smith dissented on the performance band issue. The incentive for all small-power producers is to provide all they power they can, she said. "They need to be paid to stay in operation and if they do not produce, they do not get paid. The banding proposal would operate as a penalty, not an incentive," Smith said.

Commission President Paul Kjellander and Commissioner Dennis Hansen said performance bands are necessary because both parties of a contract must have reciprocal and enforceable obligations. To qualify for the commission's posted rates, QF projects have an obligation to meet at least 90 percent of their commitment. If QFs over-deliver there is also a consequence to the company, the majority said. If unplanned for and not easily integrated, the energy may, as suggested by the company, have to be sold in the surplus market or other more economic resources of the company ramped down, the commissioners said.

Idaho Power had proposed allowing developers to revise their output estimates three times during the first year of operation and then once every two years thereafter. The commission ordered that QFs initially provide Idaho Power with one year of monthly generation estimates followed by estimates every three months.

Further, the commission revised the financial penalties Idaho Power proposed if QFs fail to meet production estimates. Idaho Power proposed that QFs that fail to deliver at least 90 percent pay the difference if the price Idaho Power pays for replacement power (which would be priced at 85 percent of market price) is greater than the monthly contract price. Idaho Power agreed to cap the penalty at 150 percent of the contract rate. Further, Idaho Power wanted to require that the QF pay for the power Idaho Power would have to purchase to meet the shortfall if the price of that power exceeded the contract price. The commission accepted the 85 percent of market price provision but removed the shortfall penalty.

2) The complainants objected to Idaho Power's metered energy test as a method of determining whether a project qualifies under the 10 MW limit the commission places on the size of small-power projects to qualify for PURPA rates. Under commission rules, rates for projects larger than 10 MW are determined on a project-specific basis. Idaho Power said the 10 MW capacity is exceeded if a QF meter reads greater than 10,000 kWh per hour. US Geothermal argued capacity should be based on average annual energy delivered rather than an hourly measure because its output will vary from 8 MW in the peak of summer to over 12 MW in winter. If limited to a 10-MW turbine, U.S. Geothermal contends that its Raft River plant could not deliver close to an average of 10 MW per year.

The majority on the commission ruled that the 10 MW capacity limit should remain, but that Idaho Power's proposed metered energy test is "operationally too restrictive." Instead, the commission ordered that QF generation be measured on a monthly basis, rather than hourly. To qualify for PURPA rates, a QF must demonstrate that, under normal or average design conditions, the project will generate at no more than 10 average megawatts in any given month. The commission also capped the maximum monthly generation qualifying for payment.

Commissioner Smith dissented, saying capacity should be determined by an annual average. Idaho Power is protected by contractual provisions that provide a maximum monthly capacity amount and is not obligated to purchase excess deliveries, Smith said. "This is nothing more than the status quo that has been available to all legitimate resources," she said.

3) The developers objected to an Idaho Power provision that allowed it to terminate its QF contracts if Idaho allowed deregulation at the retail level and other parties were able to sell electricity in Idaho Power's service territory. Under that scenario, Idaho Power argued, it would be unable to fully recover its PURPA contract costs. The commission unanimously agreed to not allow Idaho Power to terminate contracts if deregulation occurs. "We will not permit Idaho Power to terminate QF contracts for reasons other than the default of the QF," the commission said.

Documents related to this case can be accessed on the commission's Web site at www.puc.state.id.us. Click on "File Room," then "Electric Cases," and scroll down to Case No. IPC-E-04-8.

Interested parties may petition the commission for reconsideration by no later than Dec. 20. Petitions for reconsideration must set forth specifically why the petitioner contends that the order is unreasonable, unlawful or erroneous. Petitions should include a statement of the nature and quantity of evidence the petitioner will offer if reconsideration is granted.

Petitions can be delivered to the commission at 472 W. Washington St. in Boise, mailed to P.O. Box 83720, Boise, ID, 83720-0074, or faxed to 208-334-3762.

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