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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

U.S. GEOTHERMAL, INC.,)
an Idaho corporation,)
Complainant,) CASE NO. IPC-E-04-8
vs.)
IDAHO POWER COMPANY,)
an Idaho corporation,)
Respondent.)

BOB LEWANDOWSKI and MARK)
SCHROEDER,)
Complainants,) CASE NO. IPC-E-04-10
vs.)
IDAHO POWER COMPANY,)
an Idaho corporation,)
Respondent.)

IDAHO POWER COMPANY
DIRECT REBUTTAL TESTIMONY
OF
JOHN R. GALE

1 Q. Please state your name and identify the party
2 upon whose behalf you are presenting testimony.

3 A. My name is John R. Gale. I am testifying on
4 behalf of Idaho Power Company.

5 Q. Are you the same Mr. Gale that presented
6 direct testimony in this proceeding.

7 A. Yes.

8 Q. What issues will you address in your rebuttal
9 testimony?

10 A. My testimony will clarify the Company's
11 position on several issues identified by Staff and
12 intervenors in their direct testimony. I will also address a
13 number of alternative approaches proposed by Staff and
14 intervenors to resolve issues raised by Complainant's
15 testimony.

16 Q. What clarifications to the Company's position
17 need to be made?

18 A. I will begin with the testimony of Commission
19 Staff Witness Sterling. In his testimony on page 19, Mr.
20 Sterling discusses the provision (Section 14.4.1) in the
21 Company's Firm Energy Sales Agreement (FESA) that protects
22 Qualifying Facilities (QF's) if they are unable to perform
23 due to a forced outage. Mr. Sterling describes this
24 provision as "allowing a 72-hour grace period during which
25 the QF's ability to perform is excused."

1 Mr. Sterling goes on to recommend that the 72-hour
2 grace period be extended to 30 days. In fact, Section 14.4.1
3 of the Company's proposed contract provides QF's with a
4 "grace period" that will last as long as the forced outage
5 exists. The 72-hour time period is the minimum length of the
6 "grace period," not the maximum. Under Section 14.4.1 of the
7 contract, when the QF notifies Idaho Power that it is
8 suspending deliveries because a forced outage has occurred,
9 its minimum delivery obligation is adjusted to recognize the
10 impact of the forced outage. Section 14.4.1 provides that
11 the generation suspension due to the forced outage must last
12 at least 72 hours. It could last longer if the forced outage
13 actually lasts longer.

14 Q. Why does Idaho Power include the 72-hour
15 minimum forced outage?

16 A. The 72-hour minimum is included to discourage
17 abuse of the forced outage suspension provision. Without
18 some minimum outage period, a QF would be incented to
19 declare a forced outage every time some minor "hiccup"
20 occurred. The intent is not to preclude adjustments for
21 legitimate forced outages but to discourage unreasonable
22 numbers of declarations of forced outage which could result
23 in a burdensome amount of accounting and contract
24 administration activities.

25 Q. Does the Company consider the 72-hour period

1 to be the only reasonable length of time to include in the
2 FESA?

3 A. No. While 72 hours seems reasonable, a
4 shorter period would be workable, so long as it is not so
5 short as to defeat the purpose of the minimum outage period.

6 Q. Commission Staff Witness Sterling recommends
7 that the 90%-110% bandwidth proposed by the Company be
8 expanded to 80%-120%. Does the Company have a position on
9 Mr. Sterling's recommendation to expand the lower and upper
10 boundaries?

11 A. The purpose of setting an upper and lower
12 boundary is to provide QF's with an economic incentive to
13 deliver energy at the times and in the amounts they
14 committed to deliver, thereby providing at least some
15 firmness to the energy the Company purchases from QF's.
16 Increasing the upper and lower bounds from +/- 10 percent to
17 +/- 20 percent reduces the firmness and weakens the
18 Company's ability to plan for a specific amount of energy
19 from the QF each month. Idaho Power has signed four QF
20 contracts (one wind project, one hydro project, one wood
21 waste project and one industrial waste project) that include
22 the 90%-110% bandwidth. It is apparent that at least some QF
23 developers, representing a variety of technologies, believe
24 they can plan their generation schedule to successfully
25 operate within that range. It is also important to remember

1 that if a QF project does not meet its commitment within
2 this bandwidth, the agreement is not terminated. Instead the
3 bandwidth only provides a financial incentive for the
4 project to set the estimated monthly generation levels at
5 reasonable, attainable levels for that specific facility and
6 then perform accordingly. The use of a commitment level
7 bandwidth is an improvement over the pre-2003 "firm" energy
8 contracts where the QF's can deliver energy in any amount at
9 any time and there is virtually no way for the Company to
10 plan how much energy it will receive each month from
11 individual QF's. The Company believes the 90%-110% bandwidth
12 is reasonable because it encourages a realistic commitment
13 but does not create a QF barrier.

14 Q. Section 6.2.1 of the Company's proposed FESA
15 allows the QF developer to revise its monthly Net Energy
16 amounts, six months after the initial operation date, 12
17 months after the operation date, and then every two years
18 thereafter. Mr. Sterling suggests that the Company's
19 proposed two-year interval be reduced to six months. Does
20 the Company have a position on Mr. Sterling's proposal?

21 A. Since the filing of my direct testimony,
22 Idaho Power has continued to negotiate with various
23 additional QF developers. Many have suggested that in
24 addition to the dates proposed in the original agreements
25 (six months after the Operation Date, one year after the

1 Operation Date and then every two years for the remainder of
2 the FESA), it would also be reasonable to allow the projects
3 to revise the estimated monthly generation at the Operation
4 Date. The Company has reviewed this request and agrees it
5 would be reasonable and consistent with the intent of
6 establishing a level of firmness within these agreements.
7 With this addition, the Company is proposing to allow the QF
8 projects to revise their energy estimates three times during
9 the first year of operation. This change recognizes that no
10 matter how perfect the plans and engineering may be, it
11 takes some actual run-time to truly determine what a
12 generation facility's output will actually be. However,
13 after this first initial year, a viable "firm" generation
14 facility should have most of the bugs worked out.

15 After the first year, the Company believes that the
16 two-year period it has proposed is preferable to the shorter
17 six-month period proposed by Mr. Sterling because the longer
18 period adds more "firmness" to the QF's commitment. The two-
19 year interval allows the Company to more easily integrate
20 the QF resource into its biennial IRP resource planning
21 process.

22 It is also important to note that the estimated
23 generation requirement is only for **total monthly kWh**. It is
24 not measured hourly, daily or weekly. Therefore, a project
25 has considerable flexibility in a given month to vary its

1 generation on a daily basis. For a project with greater risk
2 of generation deviations, it may be prudent not to estimate
3 generation at the maximum output but instead to estimate
4 generation at a lower level to allow a "cushion" for
5 potential times of reduced generation.

6 Finally, as I noted in my prior answer concerning
7 the 90%-110% bandwidth, pre-2003 QF contracts contained no
8 enforceable energy commitment on the part of QF's so even
9 the more frequent six-month adjustment option proposed by
10 Mr. Sterling would be an improvement over prior practice. If
11 the Commission is inclined to require a more frequent
12 adjustment interval, the Company would propose a one-year
13 commitment on the part of the QF rather than the six months
14 proposed by Mr. Sterling.

15 Q. In discussing the methodology for determining
16 whether a particular QF meets the Commission's 10 MW
17 criteria for qualification for published rates, PacifiCorp
18 Witness Hale and Avista Witness Kalich both suggest that a
19 10 MW nameplate capacity limit be combined with the 10,000
20 kWh per hour metered energy limit described in your direct
21 testimony. Is that a workable arrangement?

22 A. Yes, it is. As I stated in my direct
23 testimony, Idaho Power currently combines these two tests in
24 several current Commission-approved contracts and this
25 combination has worked well. Based on this experience, I

1 believe using both nameplate and metered energy in
2 combination to determine entitlement to the published rates
3 as suggested by Mr. Hale and Mr. Kalich is reasonable.

4 Q. Do you still believe that it is important for
5 the Commission to issue an order defining how the 10 MW
6 limit should be computed?

7 A. Yes. It is critical that the Commission do
8 so. This case has demonstrated that there is substantial
9 disagreement and uncertainty as to the Commission's intent
10 regarding the appropriate methodology to be used to
11 determine if a particular QF meets the Commission's 10 MW
12 criteria. For example, U.S. Geothermal is requesting that
13 the Commission look at its specific type of generating
14 technology to determine how the 10 MW capacity limit would
15 be computed. Presumably, each generating technology, i.e.,
16 wind, biomass, hydro, etc. would also like to have the 10 MW
17 limit determined on a basis that is specifically tailored to
18 its characteristics.

19 I am convinced that a technology-by-technology
20 analysis would inject an unreasonable level of complexity
21 into the process and this complexity will inevitably result
22 in the filing of additional complaints before this
23 Commission. It is also important not to lose sight of the
24 fact that the reason the Commission decided to include the
25 10 MW limit was to standardize the process for smaller

1 projects. A technology-by-technology approach is not
2 conducive to achieving that goal.

3 The uncertainty associated with the methodology for
4 determining the 10 MW limit is further evidenced by the
5 testimony presented by several parties noting that nameplate
6 capacity should not be used because it is subject to varying
7 definitions and interpretations.

8 Some parties have also expressed concerns with using
9 metered energy as the primary test of capacity.

10 In the final analysis, the current uncertainty will
11 not be resolved until the Commission explicitly determines
12 how it wants to determine the capacity of a QF generating
13 facility. If the Commission does not make that
14 determination, we run the risk of continuing *ad hoc*
15 determinations and the potential for additional complaint
16 proceedings.

17 Q. In your opinion, is this complaint proceeding
18 the best forum for establishing the methodology for
19 determining how the 10 MW criteria will be established?

20 A. Not necessarily. If the Commission believes
21 a more thorough analysis of this issue is desirable, it may
22 be preferable to remove this 10 MW calculation issue from
23 this case and address it in greater detail in a separate
24 proceeding. It would seem to me that both utilities and QF's
25 would have a vested interest in resolving this matter

1 expeditiously and a workshop format could be useful in
2 identifying, and perhaps resolving, the issues.

3 Q. If the Commission were to remove the 10 MW
4 calculation issue from this proceeding, how should the
5 Commission address U.S. Geothermal's "grandfathering"
6 request?

7 A. If the Commission were to bifurcate this
8 proceeding to address the computation of the 10 MW limit in
9 greater detail in a separate proceeding, it would probably
10 be reasonable to "grandfather" U.S. Geothermal. The
11 Commission could then limit the issues to be decided in this
12 case to the 90%-110% issue and the stranded cost issue. The
13 Commission should condition any grandfathering as follows:
14 (1) the "grandfathered" U.S. Geothermal agreement would not
15 be precedential, (2) U.S. Geothermal would not be permitted
16 to compel any other Idaho utility to purchase its excess
17 energy, but it could sell excess generation to third
18 parties, (3) U.S. Geothermal would agree that Idaho Power
19 would receive its pro rata share of U.S. Geothermal's total
20 generation in both heavy-load and light-load hours.

21 Q. If the Commission does not desire to
22 bifurcate this proceeding, are there any other issues
23 relating to "grandfathering" that you believe the Commission
24 should consider?

25 A. Mr. Sterling, in his testimony, identified

1 several reasons why he did not believe that "grandfathering"
2 was appropriate in this case. While I believe the reasons he
3 cited are all valid, I believe the key consideration is the
4 fact that Idaho Power and U.S. Geothermal have never entered
5 into a contract. From the very beginning of the
6 negotiations, there have been fundamental differences
7 between Idaho Power and U.S. Geothermal. There has never
8 been a meeting of the minds between the parties. U.S.
9 Geothermal has always known that there was a possibility
10 that the contract the Commission would ultimately be willing
11 to approve might be materially different than the contract
12 U.S. Geothermal seeks. U.S. Geothermal's decision to proceed
13 with development activities while it litigated this case was
14 a business decision it made.

15 Q. Both PacifiCorp and Avista urge the
16 Commission to confirm that a QF project must sell its entire
17 output to a single utility. Do you have any comment on this
18 proposal?

19 A. Idaho Power, like Avista and PacifiCorp,
20 believes it would be inconsistent with the policy
21 considerations underlying the Commission's decision to cap
22 the entitlement to published rates at 10 MW to allow a QF to
23 build a 30 MW facility and then compel Idaho Power, Avista
24 and PacifiCorp each to purchase 10 MW at the published
25 rates. While the Company anticipates that transmission costs

1 would likely minimize the viability of such artificial
2 schemes, the concern is a real one. Idaho Power would agree
3 that if a QF developer constructs a project with a capacity
4 in excess of 10 MW and compels a utility to purchase its
5 output under PURPA, the Commission should not allow that
6 same QF to use PURPA to compel another Idaho jurisdictional
7 utility to purchase generation from the same facility.

8 Q. Would such a limitation discourage the
9 development of larger independent power production projects
10 in Idaho?

11 A. No, it would not. First, the larger QF can
12 compel a utility to purchase all of its energy at PURPA
13 rates determined by using the IRP methodology. Second, the
14 larger independent power project developer is not prevented
15 from constructing a merchant generating facility and selling
16 energy on the wholesale market or selling to the utility in
17 response to a Request for Proposals ("RFP"). Idaho Power's
18 draft 2004 IRP shows that Idaho Power is planning to issue
19 several RFP's for wind, geothermal and combined heat and
20 power projects in the next few years. In addition, when you
21 consider the transmission cost the QF will incur to move its
22 excess energy from the project site to third-party
23 transmission interconnection points on the transmission
24 system, in most instances the control area utility will have
25 a slight price advantage in acquiring excess energy from a

1 merchant generator interconnected to its system.

2 Q. In their testimony, Witnesses Hale and Kalich
3 both expressed concern that if a QF is not obligated to sell
4 all of its output to a single utility, the QF might sell
5 less valuable light-load-hour energy to the utility and sell
6 more valuable heavy-load-hour energy to a third party.
7 Should this issue be addressed in Firm Energy Sales
8 Agreements?

9 A. I agree that QF contracts should not permit
10 the QF to use its PURPA rights to require a utility to
11 purchase less valuable light-load-hour energy while at the
12 same time selling more valuable heavy-load-hour energy at
13 market prices.

14 Q. In his direct testimony, Mr. Kalich explains
15 why Avista does not propose to include a stranded cost
16 provision in its PURPA contracts at this time. Does his
17 explanation satisfy Idaho Power's concerns?

18 A. Not really. Mr. Kalich states that if retail
19 deregulation comes, "the Company believes that the
20 Commission has the authority to approve charges for end use
21 retail customers that would provide an opportunity for
22 recovery of cost obligations resulting from PURPA contracts.
23 If deregulation does occur at the retail level, it will be
24 important that legislation address stranded cost issues,
25 and/or the Commission retain all necessary authority to

1 address recovery of any PURPA related stranded costs."
2 Certainly if deregulation unfolds precisely as Mr. Kalich
3 describes and the Commission receives and exercises the
4 authority to ensure that the Company recovers its stranded
5 costs resulting from PURPA contracts, there would be no
6 issue. Under those circumstances, under the Company's
7 proposed contract language contained in Section 23.2, there
8 would be no QF contract termination because Idaho Power
9 would be able to fully recover its costs associated with the
10 QF agreement. What is not covered by Mr. Kalich's
11 explanation is the situation where the legislation or
12 Commission action does not provide for recovery of stranded
13 PURPA expenses. If that were to occur, the Company needs to
14 be able to assert that the government has confiscated its
15 property. Unless the Commission expressly accepts or rejects
16 the proposed contract language, Idaho Power is concerned
17 that it will face the argument that was raised in 1999 (See
18 Exhibit 204) that a change in the regulatory environment is
19 simply a business risk and does not constitute confiscation.

20 Q. Mr. Sterling also addresses the Company's
21 stranded cost provision (Section 23.2) in his testimony.
22 Like Mr. Kalich, he argues that the clause is unnecessary to
23 protect the Company's interests. Do you have any comment on
24 Mr. Sterling's testimony in this regard?

25 A. Yes. Like Mr. Kalich, Mr. Sterling states

1 that because the Commission has ordered Idaho Power to enter
2 into these contracts and the Commission has approved the
3 payments as prudently incurred expenses for ratemaking
4 purposes, the provision is unneeded. Unfortunately, we have
5 no way of knowing today how retail deregulation might be
6 imposed. If it unfolds as Mr. Sterling and Mr. Kalich
7 anticipate, Section 23.2 would never be used. Nevertheless,
8 until the Commission issues an order either approving or
9 disapproving the contract language Idaho Power has
10 requested, I am advised by my legal counsel that there is
11 some remaining risk that the Company will be vulnerable to
12 future assertions that it voluntarily waived its right to
13 claim confiscation of its property.

14 Finally, if the Company's concern at this point is
15 so remote and so unlikely, it's difficult to understand why
16 it is viewed as such a barrier to QF financing. As I noted
17 in my direct testimony, three QF developers have already
18 signed contracts containing this language, and all three
19 will need to obtain project financing. None of the three
20 indicated that the contract provision in question would
21 present an unreasonable barrier to their obtaining project
22 financing.

23 Q. On page 6 of his testimony, Mr. Kalich
24 expresses concern that the 90%-110% bandwidth proposed by
25 Idaho Power does not adequately address the lack of capacity

1 associated with intermittent energy resources like wind.

2 A. Mr. Kalich correctly notes that intermittent
3 resources like wind do not provide capacity and will impose
4 additional costs on utilities for reserve planning and
5 integrating intermittent resources. Both Mr. Sterling and
6 Mr. Kalich discuss possible discounts to be applied to
7 published avoided cost rates as a way to compensate
8 utilities for these additional integration costs. Idaho
9 Power agrees that when a larger scale wind or solar resource
10 presents itself, it would be appropriate to consider an
11 integration charge for intermittent resources. However, in
12 this case we are presented with two small wind resources.
13 Requiring them to purchase integration services from the
14 Bonneville Power Administration or computing an Idaho Power-
15 specific integration charge would be extremely burdensome
16 for these small projects. As an alternative, the Company is
17 providing these two wind resources the opportunity to
18 receive published rates for a portion of their generation.
19 These two wind developers will determine the amount of
20 energy they are willing to commit each month based on their
21 knowledge of their particular project's efficiency and
22 reliability. In the interim, Idaho Power believes this is a
23 reasonable approach that encourages the development of local
24 wind resources without unduly increasing utility cost.

25 Q. Does this conclude your rebuttal testimony?

1

A. Yes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of August, 2004, I served a true and correct copy of the DIRECT REBUTTAL TESTIMONY OF JOHN R. GALE upon the following named parties by the method indicated below, and addressed to the following:

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