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IDAHO PUBLIC
UTILITIES COMMISSION

ATTORNEYS FOR AVISTA CORPORATION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

U.S. GEOTHERMAL, INC., an Idaho corporation,)	
<i>Complainant,</i>)	
vs.)	CASE NO. IPC-E-04-08
IDAHO POWER COMPANY, an Idaho corporation,)	
<i>Respondent.</i>)	
BOB LEWANDOWSI AND BOB SCHROEDER,)	
<i>Complainants,</i>)	CASE NO. IPC-E-04-10
vs.)	
IDAHO POWER COMPANY, an Idaho corporation,)	AVISTA CORPORATION'S BRIEF RESPECTING APPLICABILITY OF FIRM AND NONFIRM RATES TO WIND POWER PROJECTS
<i>Respondent.</i>)	

Avista Corporation ("Avista") respectfully submits the foregoing comments in response to Commission's request at the evidentiary hearing on September 3, 2004 that parties submit briefs on the issue of the qualification of wind power projects for firm and nonfirm published avoided cost rates. Avista explains herein why it understands "nonfirm" and "intermittent" to refer to the inability or unwillingness of a qualifying facility ("QF") to deliver a significant measure of capacity.

INTRODUCTION

This is a case of first impression for this Commission, because no prior contested case or decision of the Commission has expressly addressed the unique generating characteristic of wind power, namely the fact that the quantity of power to be generated from wind projects cannot be predicted with assurance of accuracy from day to day, much less from moment to moment. In this connection Avista, and apparently PacifiCorp, have received no offers to sell power from wind powered projects at Idaho published avoided cost rates, and Idaho Power Company has executed only one purchase contract with a wind project at its Idaho published avoided cost. This one Idaho Power contract contained the 90%-110% bandwidth requirement recommended by Idaho Power in this proceeding.

Because there are no express prior decisions on point, the Commission will not in this proceeding be changing prior Commission policy respecting the entitlement of wind projects for firm or nonfirm avoided cost rates, as implied by Complainants at the evidentiary hearing. Moreover, there is no need for the Commission to be constrained by additional formal notice requirements, as contended by Complainants at the evidentiary hearing, from resolving this issue in this case. Avista intervened in this case because of the potential precedent that could be established, and other parties, had they been interested, also could have intervened. As it has in the past in contested cases, the Commission will be providing clarity to guide utilities and developers in the future by its decision.

Avista believes that wind power development should be encouraged and Avista has actively pursued appropriately priced wind power resources. In fact, Avista recently purchased 35 MW of wind power for a ten-year period beginning in April, 2004. However, the Public Utility Regulatory Policies Act of 1978 mandates that customers not be adversely affected by purchases from QF projects at avoided cost rates. The record in this proceeding supports an order that recognizes that utilities cannot be required to pay firm avoided cost rates for wind projects that are unable to provide capacity to utilities similar to the capacity provided by the Surrogate Avoided Resource ("SAR"). QF's that are unable to provide a significant measure of capacity similar to that provided by the SAR are selling "nonfirm" or "intermittent" power in Avista's view.

In the context of qualification for avoided cost rates, the record in this proceeding supports three possible options, or a combination of the three: (1) to clarify that wind powered projects are entitled only to nonfirm avoided cost rates, as contended by Mr. Sterling, (2) to allow utilities to negotiate a capacity discount applicable to nonfirm QF resources, as recommended by Mr. Kalich; and/or (3) to allow utilities to require a contract performance band of 90%-110% as recommended by Mr. Gale or 80%-120% as recommended by Mr. Sterling. As indicated below, there is good reason for the Commission, if it is so inclined, to agree with Mr. Sterling that wind resources are automatically entitled only to nonfirm avoided cost rates.

DISCUSSION

The underlying legal mandate that should govern the Commission's decision in this case is the Public Utility Regulatory Policies Act of 1978, which requires that rates for purchases from qualifying facilities shall not exceed the "incremental cost to the

electric utility of alternative electric energy", which is defined as, ". . .the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source." 16 U.S.C. § 824a-3(d). The SARs selected by this Commission have always had inherent to them an assumed capacity factor. For example, most recently the SAR has been a combined cycle combustion turbine. Therefore, inherent in the avoided cost rate is the assumption that qualifying facilities will also provide a significant measure of capacity to the purchasing utility. If a utility pays a rate to a qualifying facility based in part on capacity that would be produced by the SAR, but the utility receives no or virtually no capacity from the qualifying facility, then the utility will, in effect, be required to acquire capacity from another source in addition to the power from the qualifying facility. This result, in effect, violates the mandate of Congress, because the utility ends up paying more for power than had the utility actually constructed the SAR. This result will be avoided if the Commission recognizes that wind projects generally provide little or no capacity to a utility, and therefore are not automatically entitled to rates for firm power.

Mr. Kalich points out in his filed testimony that a utility is generally concerned with two types of capacity: (1) capacity reserves to serve customer loads in the event of adverse weather and/or hydroelectric conditions; and (2) generation following, sometimes referred to as integration costs, associated with the utility's obligation to respond to hour-to-hour and intra-hour changes in customer demand. Kalich, Direct p.7. Capacity is an instantaneous or near-instantaneous product. Kalich, Direct p.6.

The fact that wind projects lack the capability to provide capacity has been recognized generally, as indicated by Mr. Sterling. Also, the Commission's very early

orders implementing PURPA, recognized that there were capacity differences between types of qualifying facility generation. The Commission stated:

Commission Order No. 15746 (38 PUR4th 352) did not attempt to determine the proper capacity value to utilities on a technology-by-technology basis. We did not have before us at that time sufficient evidence to determine the reliability of such diverse technologies as wind power, biomass combustion, and hydroelectric generation. Consequently, we instructed the utilities to provide a dual option: (a) those who commit themselves to providing firm power are to receive capacity and energy payments based on the unit the utility may avoid or defer thereby; (b) those who, because of the unreliability of their technology, commit themselves only to providing nonfirm energy are to receive energy payments based on the system's avoided energy costs. Nonetheless, we recognized that such nonfirm energy has some capacity value to the utility. We therefore ordered the utilities to offer some minimal payment for nonfirm energy. Washington Water Power has offered to pay three mills in addition to system avoided energy costs computed on the basis on one year's incremental peaking capacity on the system. We find this payment just and reasonable . . .

Re Rule-making Proceeding for Consideration of Cogeneration and Small Power Production, 40 P.U.R.4th 563 (1980) (Case No. P-300-12, Order Nos. 16025 and 16048).

In this order, the Commission recognized that some resources were simply incapable of providing significant capacity value. Irrespective of whether today one would describe such power produced by such resources as "nonfirm" or "intermittent", the Commission recognized in 1980 that a resource may be *unreliable* for reasons inherent in the technology and assumed that a resource developer whose project is unreliable would be only able to offer nonfirm energy to the utility, and would be entitled only to a minimal payment for capacity. While the Commission stated that nonfirm energy has "some capacity value," and therefore ordered payment of "some minimal payment for nonfirm energy," three mills represented a small value in that era, or the present.

At the evidentiary hearing in this case, Complainants argued that the qualification for firm or nonfirm rates depended exclusively on the volition or intention of the project

developer, so that if a wind power developer *intended* to deliver all of his generation to a utility, when such power was available, he would be entitled to firm rates. However, it is clear that even in 1980 the Commission recognized that qualifying facilities had different inherent reliability characteristics, apart from the desire or intention of the developer, which the Commission assumed would be taken into account when selecting applicable rates.

The Commission was contemplating a different surrogate avoided resource ("SAR") in 1980 from that adopted later by the Commission, and the rate schedules in 1980 were structured somewhat differently from those currently in effect. However, all the SAR methodologies and avoided cost rate schedules subsequently adopted by the Commission have assumed that the hypothetical SAR would provide capacity as well as energy to an acquiring utility. Indeed the regulations of the Federal Regulatory Commission ("FERC") require that capacity be taken into account when determining avoided cost rates. Section 292.304(a) of the FERC's regulations states that, "a rate for purchases satisfies the requirements . . . if the rate equals the avoided costs determined after consideration" of such factors as reliability, dispatchability, contribution to peak load, length of contractual guarantee, etc. Also, although the Commission has considered different rate methodologies for calculating avoided costs, all avoided cost rate schedules have included both firm and nonfirm rates. Therefore, the importance of capacity to a utility has been recognized both in the determination of avoided cost with respect to the determination of the SAR and in the structure of the avoided cost rate schedules. Therefore, there is a logical and historical connection between the theoretical SAR and

the avoided cost rates applicable to qualifying facility projects that are not able to deliver more than minimal amounts of capacity to a utility.

Moreover, irrespective of past determinations, the Commission has before it the issue of what it should require of future contracts, given current conditions. As Mr. Gale's testimony indicated, Idaho Power now is experiencing a capacity shortfall. This indicates a shift in utility requirements from those experienced years ago. Additionally, as illustrated by this case, the significance of wind development, and other alternative technologies to our region is increasing. The Commission should afford utilities the flexibility to deal contractually with the lack of firmness associated with wind and other technologies as these technologies assume more importance.

It is reasonable for utilities to negotiate for the purchase of power from qualifying facilities on the basis that, absent force majeure events, power will be delivered to the utility and its customers, on some predictable seasonal, daily and instantaneous basis. Alternatively utilities and QF developers should be able to negotiate provisions that compensate for delivery of power that cannot be reliably delivered. Absent contract provisions that require predictability in power deliveries, or otherwise compensate for the absence of predictability, a contract to purchase power from an intermittent generator amounts at "firm" energy rates amounts to little more than an exclusive option arrangement under which a developer promises to sell the output of its generators, when they are working, to the purchasing utility at a guaranteed rate, but makes no meaningful promise that the power will be available when it is needed.

"Reliability" and "firmness" as used by the Commission in its past decisions clearly relate to the idea that that power will be available when needed. Complainants in

this proceeding now attempt to strip from the meaning of the word, "firm," any relationship to the concept of reliability or capacity. Their interpretation would restrict the right of utilities to require contract provisions that would encourage or require qualifying facilities to deliver power to utilities with enough reliability so that the utility can plan on its delivery. This Commission should not adopt a definition of "firm," "nonfirm" and "reliability" devoid of any meaning to the purchaser, other than the developer's promise to deliver all of his output to a single purchaser.

In this proceeding the Commission heard three ways in which utilities might contractually accommodate wind power projects, or otherwise encourage wind projects to deliver capacity. Mr. Gale and Mr. Sterling propose a "band" to apply to all contracts. Mr. Sterling also proposes that wind projects automatically qualify only for the nonfirm rate. (Presumably, exceptional wind power projects that are able to guarantee a significant degree of capacity could still request firm rates from a utility.) Mr. Kalich stated Avista's recommendation that unreliable projects be paid a fixed rate set by schedule, but reduced by a capacity discount that takes into account the absence of capacity. All of the recommendations represent a reasonable effort to accommodate wind power and similar projects that may be incapable of delivering power on a predictable basis.

The Commission should affirm each utility's right to negotiate specific contract provisions for "firming" power deliveries from otherwise unpredictable resources, or negotiating adjustments to firm rates that compensate for the unpredictability. Absent these negotiated provisions, a resource that has little predictable capacity value on a

seasonal, daily, and instantaneous basis should be entitled only to nonfirm rates, as proposed by Mr. Sterling.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September, 2004, I caused to be served a true and correct copy of AVISTA CORPORATION'S BRIEF by the method indicated below, and addressed to the following:

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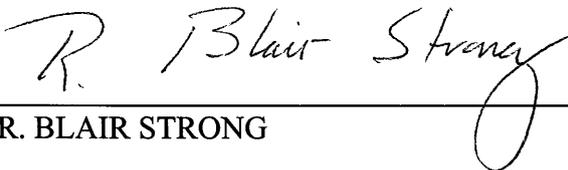
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