

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER HANSEN  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: SCOTT WOODBURY**

**DATE: MAY 27, 2004**

**RE: CASE NO. IPC-E-04-8  
U.S. GEOTHERMAL vs. IDAHO POWER  
CASE NO. IPC-E-04-10  
LEWANDOWSKI AND SCHROEDER vs. IDAHO POWER  
MOTION FOR CONSOLIDATION AND/OR INTERVENTION**

Case No. IPC-E-04-8 U.S. Geothermal

On March 25, 2004, U.S. Geothermal, Inc. in Case No. IPC-E-04-8 filed a complaint against Idaho Power Company alleging that Idaho Power was proposing PURPA contract terms that were unjust, unreasonable and unlawful. U.S. Geothermal is the owner and developer of the Raft River Geothermal Power Plant, a 15 MW air-cooled, closed cycle geothermal electric generating plant to be constructed in Cassia County, Idaho (Raft River Facility). The Raft River Facility is a Qualifying Facility as that term is used and defined in the Public Utility Regulatory Policies Act of 1978 (PURPA) and 18 C.F.R. § 292.207.

As reflected in the U.S. Geothermal complaint, Idaho Power's contract demands are unjust, unreasonable and contrary to law because:

1. Idaho Power refuses to purchase an annual average of 10 MW of power from U.S. Geothermal at the Commission-approved non-levelized posted rates. Instead, Idaho Power insists that it will only purchase a maximum of 10 MW in any given hour at the posted rates. U.S. Geothermal contends that there is no basis in law or in fact with such a limitation.

2. Idaho Power insists on extreme financial penalties if U.S. Geothermal's total output in any month falls below 90%, or above 100%, of its projected output. U.S. Geothermal contends that there is no basis in law or in fact for such penalties.

3. Idaho Power insists that it must have the ability to terminate its contractual obligation to purchase U.S. Geothermal's power if (1) Idaho law is modified to permit any other party to sell electricity at retail in Idaho Power's service territory and (2) such change in law results in Idaho Power being unable to recover in its retail revenue requirement all costs attributable to the agreement with U.S. Geothermal. U.S. Geothermal contends that there is no basis in law or in fact for Idaho Power's position, and it would effectively nullify this Commission's rules by making it extremely costly, if not impossible, to finance PURPA projects.

On April 19<sup>th</sup>, Idaho Power filed an Answer.

Case No. IPC-E-04-10

On April 28, 2004, Bob Lewandowski and Mark Schroeder filed a complaint against Idaho Power Company in Case No. IPC-E-04-10. Both Mr. Lewandowski and Mr. Schroeder are in the process of developing wind power projects in Idaho, projects that will be qualifying facilities pursuant to PURPA.

Mr. Lewandowski and Mr. Schroeder complain that (1) Idaho Power is insisting on contract provisions that obviate the requirement that a purchase of all of the output from these projects at full avoided cost rates when said output is less than 90% or more than 110% of projected output in the contract. (2) Idaho Power is also insisting on a contract provision called "shortfall energy" which would actually require the developer to pay Idaho Power for electricity not produced by the project with no cap or ceiling on the price. (3) By later amendment the complainants also incorporated a third count regarding Idaho Power's proposal to terminate the agreement should retail deregulation be implemented in Idaho. They contend there is no basis in law or fact for this position and that it would effectively nullify the Commission's rules by making it extremely costly, if not impossible, to finance PURPA projects.

On May 17, 2004, Idaho Power filed an Answer. The complainants allege that further answer as to its third count should not burden Idaho Power Company, the complainants expecting that the Company's response on that issue will be the identical one sentence denial it filed in its Answer to U.S. Geothermal's complaint.

## Motion to Consolidate and/or Intervene

On May 12, 2004, complainants Lewandowski and Schroeder filed a Motion to Consolidate their complaint in Case No. IPC-E-04-10 with the U.S. Geothermal complaint in Case No. IPC-E-04-8. Alternatively, they request authority to intervene as a party in the U.S. Geothermal docket.

### **MOTION TO CONSOLIDATE**

Mr. Lewandowski and Mr. Schroeder contend that the issues raised in Case Nos. IPC-E-04-10 and IPC-E-04-8 both deal with PURPA contract terms insisted on by Idaho Power Company. The issues in both complaints, they contend, are essentially identical. The defendant in both dockets is Idaho Power Company and the complainants in both dockets are QF developers who seek Commission guidance on Power Purchase Agreement issues that are essentially identical.

Commission Rule of Procedure 247 (IDAPA 31.01.01.247) allows the Commission to consolidate dockets when "it finds that they present issues that are related and that the rights of the parties will not be prejudiced." Mr. Lewandowski and Mr. Schroeder contend that no party will be prejudiced by consolidation because no procedural actions have been taken in either docket except for the actual filing of the complaint and the Company's Answers. In addition, they contend that there is no prejudice because the issues in both dockets are so closely related.

### **IDAHO POWER RESPONSE**

Idaho Power by way of response recommends consolidating Case Nos. IPC-E-04-8 and IPC-E-04-10. The principal differences between the two complaints, the Company notes, appear to be (1) interconnection issues arising out of the fact that U.S. Geothermal's Raft River Project is physically located in the service area of the Raft River Co-op and (2) U.S. Geothermal's request that the Commission order Idaho Power to purchase generation from the Raft River Project at the published rates approved for QF's smaller than 10 MW even though U.S. Geothermal's Raft River Project has a capacity larger than 10 MW. Mr. Lewandowski's and Mr. Schroeder's respective projects will be directly interconnected with the Company's system and have capacities less than 10 MW.

Idaho Power contends that if the two cases were consolidated, the issues that are unique to U.S. Geothermal's complaint could be easily separated from the issues that are common to both complaints. Under the circumstances, Idaho Power does not believe it is either

necessary or desirable for the Commission to conduct two separate proceedings when both of the complaints seek a resolution of the same issues.

#### U.S. GEOTHERMAL OPPOSITION TO MOTION TO CONSOLIDATE

U.S. Geothermal opposes Mr. Lewandowski's and Mr. Schroeder's Motion to Consolidate. In order to speed the resolution of this case, U.S. Geothermal states that it has agreed to an expedited filing of its testimony. Pursuant to informal agreement of U.S. Geothermal, Idaho Power and Commission Staff, the following scheduling has been agreed to:

Direct testimony deadline—U.S Geothermal	June 2, 2004
Direct testimony deadline—Idaho Power	July 15, 2004
Direct testimony deadline—Staff	August 5, 2004
Rebuttal testimony deadline	August 19, 2004

A tentative hearing date of September 2 (03), 2004, has been reserved on the Commission's calendar

Granting the Motion to Consolidate, U.S. Geothermal contends, would undoubtedly require the Commission to establish a schedule for the proceeding other than the one agreed to, thus prejudicing U.S. Geothermal's attempt to resolve this case as rapidly as possible. Because of the prejudice or impact on U.S. Geothermal, it contends that consolidation is not appropriate under the provisions of Rule 247 of the Commission's Rules of Procedure.

#### MOTION TO INTERVENE

Should the Commission not allow consolidation on the two dockets, Mr. Lewandowski and Mr. Schroeder respectfully request that the Commission grant them status as an intervening party in the U.S. Geothermal docket, Case No. IPC-E-04-8. Issues raised in that docket, they contend, will substantially impact their ability to proceed with their respective wind projects. They therefore contend that they have a direct and substantial interest in that docket. Rule 74 of the Commission's Rules provides that "if a Petition to Intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the Commission ...will grant intervention."

U.S. Geothermal admits that Mr. Lewandowski and Mr. Schroeder have a "direct and substantial interest" in the U.S. Geothermal proceedings, and therefore have a right to intervene in the proceeding so long as their participation does not unduly broaden the scope of the proceedings.

## COMMISSION DECISION

Two complaint proceedings are pending before the Commission against Idaho Power Company. At issue in both complaints are the contract terms required by Idaho Power of PURPA QFs. Mr. Lewandowski and Mr. Schroeder request that the two dockets be consolidated. The Motion for Consolidation is supported by Idaho Power and opposed by U.S. Geothermal. U.S. Geothermal contends that scheduling has been agreed to and that the speedy resolution of its case is important. Staff notes that if the cases are consolidated Idaho Power agrees to slip the direct testimony file date for Mr. Lewandowski and Mr. Schroeder to June 09, 2004. All other proposed scheduling dates remain the same. Alternatively, Mr. Lewandowski and Mr. Schroeder request authority to intervene in the U.S. Geothermal Docket.

Does the Commission find it reasonable to consolidate Docket Nos. IPC-E-04-8 and IPC-E-04-10? If not, how does the Commission wish to process the two cases? Does the Commission find the foregoing scheduling for the U.S. Geothermal complaint (or consolidated docket) acceptable?

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Scott Woodbury

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