Office of the Secretary
Service Date
September 3, 2004

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF AN AGREEMENT FOR SALE AND PURCHASE OF ELECTRIC ENERGY BETWEEN IDAHO POWER COMPANY AND THE J.R. SIMPLOT COMPANY.	**CASE NO. IPC-E-04-16** **ORDER NO. 29577**

On June 25, 2004, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a Firm Energy Sales Agreement between Idaho Power and J.R. Simplot Company (Simplot) dated June 18, 2004 (Agreement).

Simplot currently owns, operates and maintains a 15.9 MW cogeneration facility (project) at its industrial site near Pocatello, Idaho. The project is a qualified cogeneration facility under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). As reflected in the Company's Application, the Simplot project is currently interconnected to Idaho Power and is selling energy to Idaho Power as a Qualifying Facility (QF) in accordance with a Firm Energy Sales Agreement dated January 24, 1991 (Order No. 23552) and as subsequently amended on November 30, 1993 (Order No. 25353) and February 23, 2001 (Order No. 28730), and by two letter Agreements signed by the parties that extended the term of the 1991 Agreement to February 29, 2004.

Agreement

Under the terms of the submitted Agreement, Simplot has elected to contract with Idaho Power for a one-year term. The Agreement contains non-levelized published avoided cost rates established by the Commission for energy deliveries less than 10 MW (Order No. 29391) for a contract year March 1, 2004 through February 28, 2005. The Agreement will "evergreen" or automatically renew from year-to-year unless terminated. Agreement ¶ 5.3. Idaho Power will pay the published, less than 10 MW non-levelized non-fueled energy price in accordance with the Commission Order in effect as of March 1st of each contract year.

The Company in this Agreement defines energy delivered to Idaho Power exceeding 10,000 kW in a single hour as "Inadvertent Energy." Agreement ¶ 1.9. As reflected in the

Agreement, Simplot does not intend to generate and deliver Inadvertent Energy. If Simplot accidentally generates and delivers Inadvertent Energy, Idaho Power will not purchase or pay for Inadvertent Energy.

As an incentive for Simplot to deliver energy to the Company during times when it is of greater value to Idaho Power, the Company has refined the seasonalization of rates to coincide to the months in which Idaho Power has identified actual energy needs and periods of higher demands. Agreement ¶ 6.2.

As reflected in Agreement ¶ 8.1, Idaho Power states that it waives any claim to ownership of "Environmental Attributes." Environmental Attributes include, but are not limited to green tags, green certificates, renewable energy credits (RECs) and tradable renewable certificates (TRCs) directly associated with the production of energy from the Simplot project. Idaho Power notes the Commission's language regarding Environmental Attributes in Case No. IPC-E-04-2, Order No. 29480. In that Order the Commission stated:

> We find that the issue presented by Idaho Power in its Petition does not present an actual or justiciable controversy in Idaho and is not ripe for a declaratory judgment by this Commission. Declaratory rulings are appropriate regarding the applicability of any statutory provision or of any rule or order of this Commission. See IDAPA 31.01.01.10 1; Uniform Declaratory Judgment Act Idaho Code 10-1201 et seq. A declaratory ruling contemplates the resolution of prospective problems. The rights sought to be protected by a declaratory judgment may invoke either remedial or preventive relief; it may relate to a right that is only yet in dispute or a status undisturbed but threatened or endangered; but in either event it must involve actual and existing facts. Idaho Code Supreme Court in Harris v. Cassia County, 106 Idaho 513 , 516-517, 618 P.2d 988 (1984). We find that none of the predicates are present in this case. In making this finding, the Commission notes that FERC on April 15 , 2004 (Docket EL03-133-001 107 FERC ¶ 61,016) denied rehearing of its earlier October 1, 2003 Order (105 FERC ¶ 61,004). We note also that the State of Idaho has not created a green tag program, has not established a trading market for green tags, nor does it require a renewable resource portfolio standard.
> While this Commission will not permit the Company in its contracting practice to condition QF contracts on inclusion of such a right-of- first refusal term, neither do we preclude the parties from voluntarily negotiating the sale and purchase of such a green tag should it be perceived to have value. The price of same we find, however, is not a PURPA cost and is not recoverable as such by the Company. Recovery of those expenses will be reviewed as are all other non-PURPA costs.

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Idaho Power states that it is willing to waive any legal rights to the Environmental Attributes, if the Commission is willing to provide the Company with reasonable assurance that the Company will not be penalized in a future revenue requirement proceeding for having agreed to forego any ownership interest or right in the Environmental Attributes. By filing this Agreement, Idaho Power states that it is presenting the Commission with a real case or controversy and, therefore, the lack of ripeness identified by the Commission in the declaratory judgment action is not present in this case.

Agreement ¶ 24 provides that the Agreement will not become effective until the Commission has approved without change all the Agreement terms and conditions and declared that all payments to Simplot that Idaho Power makes for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Should the Commission approve the Agreement, Idaho Power intends to consider the effective date of the Simplot Agreement to be March 1, 2004.

Idaho Power further requests a Commission finding that all payments for purchases of energy under the January and February 2004 extensions of the 1991 Agreement will be allowed as prudently incurred expenses for ratemaking purposes. The rate paid for energy during the months of January and February 2004 was the same rate specified in the 1991 Agreement for December 2003 (0.04201¢/kWh) and is less than the then and current published avoided cost rates for those same months.

Staff Comments

On July 22, 2004, the Commission issued Notices of Application and Modified Procedure in Case No. IPC-E-04-16. The deadline for filing written comments was August 13, 2004. The Commission Staff was the only party to file comments. Staff recommends that the Agreement be approved and that all payments to Simplot under the Agreement be allowed as prudently incurred expenses for ratemaking purposes. Staff agrees that the contract's definition and treatment of "Inadvertent Energy" effectively limits Simplot to a capacity of less than 10 MW and qualifies the cogeneration project for published avoided cost rates. Staff also expresses no objection to the "evergreen" provision whereby the rates are updated annually and the contract is automatically renewed from year to year unless terminated. Agreement ¶ 5.1.

Despite representations of the Company to the contrary in Agreement ¶ 8.1, Staff believes that this case does not present the question of ownership of "Environmental Attributes." Because Simplot's cogeneration project is presently generating and will continue to generate regardless of whether there are Environmental Attributes associated with the project, Staff believes that the project's Environmental Attributes would have little or no marketable value. Furthermore, Staff questions whether the energy from the Simplot project could be certified as "green" under any certifying organization's criteria, and whether the project even possesses any Environmental Attributes with value as green tags, green certificates, RECs or TRCs.

In the event, however, that the Commission determines that the issue of Environmental Attributes has been squarely presented, Staff incorporates its related comments filed in Case No. IPC-E-04-2. In those comments, Staff stated its belief that neither PURPA or other federal law (including the Energy Policies Act of 1992) nor Title 61 of the Idaho Code gives the Commission jurisdiction over Environmental Attributes. Staff recommended in that case that if the Commission determined that it has jurisdiction, that the Commission rule that mandatory purchases from QFs under PURPA do not convey ownership of any marketable environmental attributes and that any environmental attributes remain with the QF.

Idaho Power also requests treatment of energy purchased from Simplot in January and February 2004 pursuant to Letter Agreement dated December 22, 2003 and January 30, 2004 as required PURPA purchases. The letters reflect that the expiration of the Commission approved Agreement (January 24, 1991) and associated amendments (November 30, 1993; February 23, 2001) was December 31, 2003. The Company in this filing requests an effective date for the Agreement of March 1, 2004 and requests that the Commission declare all payments it makes to Simplot for purchases of energy be allowed as prudently incurred expenses for ratemaking purposes.

Staff contends that extension of the expiring PURPA contract was a significant change or modification that required Commission approval. The Company's letter filing with the Commission was informational only. No Commission approval of the extension agreement was requested. As part of its unified regulatory scheme in implementing PURPA, the Commission, Staff notes, has long required that signed power purchase contracts be presented to it for review, approval and lock-in of avoided cost rates. The parties, Staff contends, cannot by Letter Agreement deprive the Commission of its ratemaking authority under PURPA and *Idaho Code* §§ 61-502 and 61-503 or relieve the utility of its obligations under *Idaho Code* § 61-307. Similarly, Staff contends that the parties should not seek retroactive approval of a new contract with an effective date more than five months past.

Although the Company neither sought nor obtained Commission approval of the two contract extension periods, Staff recommends that the purchases of energy in January and February 2004 be treated for ratemaking purposes as purchases mandated under PURPA. Staff makes this recommendation because the rates paid by Idaho Power during the months of January and February 2004 were less than the then current published avoided cost rates for those same months. Staff also reluctantly recommends that the Commission approve the Agreement's March 1, 2004 effective date. In making this recommendation, Staff acknowledges that under the Company's PCA mechanism period PURPA costs are recovered at 100% and non-PURPA costs are subject to a 90/10 sharing.

COMMISSION FINDINGS

The Commission has reviewed the filings of record in Case No. IPC-E-04-16 including the Firm Energy Sales Agreement dated June 18, 2004, and the related comments and recommendations of the Commission Staff. Based on our review of the record, we continue to find it appropriate to process this case pursuant to Modified Procedure. IDAPA 31.01.01.204.

Idaho Power in this case requests Commission approval of a PURPA Firm Energy Sales Agreement with the J.R. Simplot Company. Under the terms of the submitted Agreement, Simplot has elected to contract with Idaho Power for a one-year term. We find that the Agreement contains non-levelized published avoided cost rates established by the Commission for energy deliveries less than 10 MW for a contract year March 1, 2004 through February 28, 2005. Although the Simplot cogeneration facility has a generation capacity of 15.9 MW, we find that the "inadvertent energy" contract provisions provide an adequate means of qualifying the project for the published avoided cost rates.

The submitted Agreement by its terms will "evergreen" or automatically renew from year-to-year unless terminated. We find the evergreen clause to be acceptable, as it is coupled with an annual change in QF purchase rates, i.e., an adoption of the published less than 10 MW non-levelized non-fueled energy price in effect as of March 1 of each contract year.

Idaho Power requests Commission assurance that the Company will not be penalized in a future revenue requirement proceeding for having agreed to forego any ownership interest or right in the environmental attributes associated with Simplot's Pocatello cogeneration facility. The Commission has reviewed its prior Order No. 29480 language in Case No. IPC-E-04-2 regarding environmental attributes. The regulatory landscape has not changed. The state of Idaho has still not created a green tag program, has not established a trading market for green tags, nor does it require a renewable resource portfolio standard. We note, as we did earlier, that the utility and QFs are free to voluntarily contract and negotiate the sale and purchase of such green tags should environmental attributes be perceived by the contracting parties to have value. The price of same we find, however, is not a PURPA cost and is not recoverable as such by the Company. Recovery of those expenses will be reviewed as are all other non-PURPA costs.

As qualified above, the Commission finds it reasonable to approve the submitted Agreement and further finds it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

The Agreement tendered is dated June 18, 2004. The prior Commission approved Agreement between Idaho Power and Simplot expired December 31, 2003. Idaho Power requests that all energy purchased from Simplot in January and February 2004 pursuant to Letter Extension Agreements dated December 22, 2003 and January 30, 2004 be treated as purchases under PURPA for purposes of PCA expense recovery. The Company also requests that the submitted Agreement be approved for an effective date of March 1, 2004. The contract rates for the purchases of energy in January and February 2004 were less than the then current published avoided cost rates for those same months. The contract rate for energy purchases subsequent to March 1 are pursuant to the non-levelized published avoided rates established by the Commission in Order No. 29391 effective December 15, 2003. We find it reasonable to treat the purchases pursuant to letter extensions from December 31, 2003 through February 28, 2004 and purchases since March 1, 2004, for accounting and expense recovery as PURPA required purchases. We put the Company on notice that it must improve its QF contracting practices. There are regulatory consequences associated with the voluntary or involuntary nature of a purchase. Commission approval of QF contracts is not a meaningless exercise. The Commission strongly encourages the Company to manage its PURPA contract portfolio and expiring contracts in a more vigilant and responsible manner.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations for the purchase of energy from Qualified Facilities, and to implement FERC rules.

ORDER

In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission does hereby approve the June 18, 2004, Firm Energy Sales Agreement between Idaho Power Company and the J.R. Simplot Company for an effective date of March 1, 2004.

IT IS FURTHER ORDERED and the Commission does hereby approve post December 31, 2003, energy purchases from J.R. Simplot Company as mandatory purchases pursuant to PURPA and as qualifying for related regulatory expense treatment.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3rd day of September 2004.

Paul Kjellander

PAUL KJELLANDER, PRESIDENT

Marsha H Smith

MARSHA H. SMITH, COMMISSIONER

Dennis S. Hansen

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell

Jean D. Jewell
Commission Secretary

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