

**DECISION MEMORANDUM**

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

**FROM: SCOTT WOODBURY**

**DATE: JULY 12, 2004**

**RE: CASE NO. IPC-E-04-16 (Idaho Power)  
FIRM ENERGY SALES AGREEMENT  
J.R. SIMPLOT COMPANY (Pocatello)**

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.

On March 5, 2004, Idaho Power filed an Application with the Commission requesting approval of a Firm Energy Sales Agreement between Idaho Power and Simplot dated February 19, 2004. Reference Case No. IPC-E-04-7. Subsequent to initial Notice of Application and Modified Procedure, and following the filing of Staff and Reply Comments, Idaho Power

requested that its Application be withdrawn. Reference Commission Order No. 29503, May 27, 2004.

Under the terms of the newly 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 1<sup>st</sup> of each contract year.

The submitted Agreement, the Company states, is similar in many respects to recent QF contracts between Idaho Power and Tiber Montana LLC (IPC-E-03-1), and United Materials of Great Falls, Inc. (IPC-E-04-1).

As reflected in the Agreement, the Company has defined 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. Reference 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. Noting the Commission’s language regarding Environmental Attributes in Case No. IPC-E-04-2, Order No. 29480, 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, including the language in Article 8, 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 requests that the Commission issue an Order approving the Firm Energy Sales Agreement between Idaho Power and Simplot without change or condition. The Company further requests a Commission finding that all payments for purchases of energy under the Agreement and 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¢ per kWh) and less than the then and current published avoided cost rates for those same months.

#### **COMMISSION DECISION**

Staff recommends that the Company's Application in Case No. IPC-E-04-16 be processed pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. Does the Commission agree with Staff's recommended procedure?

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Scott Woodbury

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