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UTILITIES COMMISSION

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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR APPROVAL) CASE NO. IPC-E-04-16
OF AN AGREEMENT FOR SALE AND)
PURCHASE OF ELECTRIC ENERGY)
BETWEEN IDAHO POWER COMPANY AND) COMMENTS OF THE
THE J.R. SIMPLOT COMPANY.) COMMISSION STAFF
_____)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on July 22, 2004 submits the following comments.

BACKGROUND

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Modified Procedure, and following the filing of Staff and Reply Comments, Idaho Power requested that its Application be withdrawn.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 1st 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).

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.

ANALYSIS

This contract includes several provisions that make it unique from some prior Idaho Power contracts. Staff will discuss each of these unique provisions, but will not discuss those provisions that are common to QF contracts that have been previously approved by the Commission.

10 MW Size Limit

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. This contract provision effectively limits Simplot to a capacity of less than 10 MW; the current threshold for determining availability for published avoided cost rates. Staff supports this contract provision.

Seasonalization of Rates

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. The months chosen to represent each season are the same as those in the recently approved Renewable Energy of Idaho contract (IPC-E-04-5). Staff believes that the refinement of months within each season as reflected in this contract is appropriate.

Waiver of Environmental Attributes

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.

Despite representations of the Company to the contrary, Staff believes that this case does not present the question of ownership of Environmental Attributes. Simplot's cogeneration project has been generating since 1991. While its power sales Agreement is new, Simplot's cogeneration project and whatever environmental impacts it may have, either positive or negative, are not new. Thus, Staff contends that no one would be willing to pay now for "green tags" or other environmental attributes for which they have been enjoying the benefits for nearly 15 years. Because Simplot's cogeneration project would 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 as if expressly set forth herein and includes same as an attachment to these comments. In those attached 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 that if the Commission determined that it has jurisdiction, that the Commission issue a declaratory order stating that mandatory purchases from QFs under PURPA do not convey ownership of any marketable environmental attributes. Accordingly, Staff recommended that any environmental attributes remain with the QF.

"Evergreen" Provision

The Agreement will "evergreen" or automatically renew from year-to-year unless terminated. Agreement § 5.1. Because the Agreement contains an avoided cost rate that is based on a one-year contract length, Staff has no objection to the "evergreen" provisions in the

proposed contract. The one-year term also obviates the need for the “de-regulation” termination option that Idaho Power has sought to include in other pending QF contracts and that is one of the issues in Case No. IPC-E-04-08/10 currently before the Commission.

Energy Purchases Subsequent to Contract Expiration on December 31, 2003

Idaho Power requests Commission approval of energy purchased from Simplot in January and February 2004 pursuant to letter agreements dated December 22, 2003 and January 30, 2004. The letters reflect that the expiration of the Commission approved agreement (January 24, 1991) and associated amendments (Nov. 30, 1993; Feb. 23, 2001) was December 31, 2003. The Company recites in the extension letters that the parties were engaged in diligent contract negotiation for a new QF firm purchase power agreement and by letter agreements the parties were extending the expiration date of the Commission approved agreement to February 29, 2004. The extension agreements were submitted under the signature of Randy Allphin, Contract Administrator for Idaho Power. For purchases made subsequent to the letter agreements, Idaho Power states that it intends to consider the effective date of the Agreement to be March 1, 2004, and requests that the Commission declare all payments it makes to Simplot for purchases of energy will 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. No Commission approval of the extension agreement was requested. As part of its unified regulatory scheme in implementing PURPA, the Commission has long required that signed power purchase contracts be presented to it for review, approval and lock-in of avoided cost rates. The parties 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, the parties should not seek retroactive approval of a new contract with an effective date more than five months past.

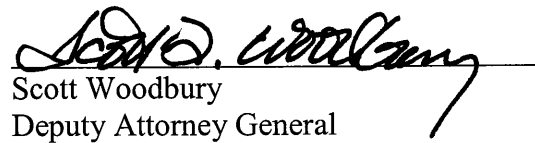
Although the Company neither sought nor obtained Commission approval of the contract extension periods, Staff recommends that the purchases of energy in January and February 2004 be treated for ratemaking purposes as a purchase mandated under PURPA because the rates paid by Idaho Power during the months of January and February 2004 were less than the 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, PURPA costs are recovered at 100% and non-PURPA costs are subject to a 90/10 sharing. Staff recommends that Commission encourage the Company to manage its PURPA contract portfolio and expiring contracts in a more vigilant and responsible manner.

RECOMMENDATIONS

Staff recommends approval of the Agreement as submitted.

Respectively submitted this 13th day of August 2004.


Scott Woodbury
Deputy Attorney General

Technical Staff: Rick Sterling

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