DECISION MEMORANDUM

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

FROM: LISA NORDSTROM

DATE: NOVEMBER 4, 2004

RE: IN THE MATTER OF IDAHO POWER COMPANY'S APPLICATION FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER COMPANY AND FOSSIL GULCH WIND PARK, LLC. CASE NO. IPC-E-04-19.

On September 14, 2004, Idaho Power Company filed an Application requesting an Order approving a Firm Energy Sales Agreement ("Agreement") dated September 9, 2004, between Idaho Power and Fossil Gulch Wind Park, LLC ("Fossil Gulch"). Under the Agreement, Fossil Gulch would sell and Idaho Power would purchase electric energy generated by wind-powered generating equipment to be constructed by Fossil Gulch. The Company asked the Commission to declare that all payments for energy purchases made under the Agreement be allowed as prudently incurred expenses for ratemaking purposes and to approve the Agreement without material change or condition. The Commission issued a Notice of Application, Modified Procedure and Comment Deadline on October 12, 2004 and specifically sought comment on which avoided cost rate should potentially apply to the Agreement. Order No. 29611. Three public comments were received in addition to those submitted by Commission Staff.

THE APPLICATION

Fossil Gulch intends to construct, own, operate and maintain wind generating equipment in a wind park ("Project") at a site approximately 3.5 miles west-northwest of Hagerman, Idaho. The Project will be a qualified small power production facility under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Fossil

Gulch has selected January 1, 2005, as the scheduled operation date and December 15, 2004, as the first energy date.

The term of the Agreement is 20 years from the operation date, and the Agreement provides for Idaho Power to pay the published non-levelized energy prices in accordance with Commission Order No. 29391 with seasonalization factors applied. Idaho Power's Application describes the Agreement as being similar to the Tiber Hydro and United Materials wind project agreements previously approved by the Commission.

Fossil Gulch desires to utilize seven 1.5 MW wind turbine generators. To avoid pushing the Project above the 10 MW nameplate capacity, Fossil Gulch has agreed to adjust the controls on its turbine generators so that in aggregate, the electrical output of the seven wind turbines will not exceed 10,000 kWh in any hour. If energy in excess of this amount ("Inadvertent Energy") is accidentally generated, Idaho Power will not purchase or pay for it.

Because Fossil Gulch has agreed to limit its generation below 10,000 kWh per hour, and in recognition of the benefits of encouraging the development of a wind energy project in its control area, Idaho Power requests the Commission approve the use of published Qualified Facility (QF) avoided cost rates for this Project, even though the Project's nameplate capacity exceeds 10 MW. Idaho Power notes that the Commission recently approved a Firm Energy Sales Agreement with J.R. Simplot Company that included the same Inadvertent Energy provisions. Order No. 29577. This Agreement includes the 90-110% band provisions that were included in the Tiber, United Materials, Renewable Energy and J.R. Simplot Agreements (Case Nos. IPC-E-03-1, IPC-E-04-1, IPC-E-04-5, and IPC-E-04-16, respectively).

The Fossil Gulch Agreement includes the same Environmental Attributes provision (Section 8.1) approved by the Commission in Order No. 29577 for the J.R. Simplot Pocatello QF contract. The Agreement does not provide for any purchase of the Project's Environmental Attributes by Idaho Power, and the Company is not seeking to recover any value for Environmental Attributes in this Agreement.

The Agreement contains non-levelized, non-fueled published avoided cost rates in conformity with applicable Commission Orders. All applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 will be assessed to Fossil Gulch.

Section 24 of the Agreement provides that the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions, and declared that all payments Idaho Power makes to Fossil Gulch for energy purchases be allowed as prudently incurred expenses for ratemaking purposes.

PUBLIC COMMENTS

In response to the Notice of Application, Modified Procedure and Comment Deadline issued in Order No. 29611, the Commission received three comments from Idaho Power customers. One commenter indicated that the Application should be approved "if it means [a] reduction in rates for all customers." The commenter also questioned why Idaho Power does not build the facility itself rather than buy the energy from Fossil Gulch.

A second customer from Boise noted that while he "applaud[s] the use of renewable power" and makes a voluntary contribution to its use on his electric bill, he was concerned that using an outside corporation to provide this energy to Idaho Power would add an unnecessary layer of administration. He believes Idaho Power should be "more involved in developing this for themselves" rather than buying this type of Idaho-produced energy from another entity.

After offering a detailed analysis of the contract provisions, the third Idaho Power customer supported approval of the Application. He also requested "the Commission state in no uncertain terms that this contract not be considered a precedent for future power sales agreements under the Public Utility Regulatory Policies Act laws in Idaho" as it did in Case Nos. IPC-E-04-1 and -5 (the United Materials and Renewable Energy Agreements, respectively.)

STAFF COMMENTS

Contract Rates: Staff explained that the avoided cost rates contained in the Agreement are those that have been in effect since December 15, 2003 (Order No. 29391). However, three recent events have triggered the computation of new rates—the conclusion of general rate cases for Idaho Power and Avista, and the release of a new natural gas price forecast by the Northwest Power and Conservation Council (NPCC)[1]. Although Staff has already computed new rates, they have yet to be adopted by the Commission. At the Commission's November 1 decision meeting, Staff proposed that new dockets be opened for the purpose of reviewing and adopting new avoided cost rates reflecting changes due to these recent events. Staff also noted that the computation of the rates is a ministerial task done in accordance with

[1] The Northwest Power Planning Council (NWPPC) is now known as the Northwest Power and Conservation Council (NPCC).

prior Commission orders; nevertheless, past practice has been for the Staff's computation of the rates to be reviewed by the utilities to insure mathematical accuracy.

On Friday, September 24, 2004, the NPCC released a new natural gas price forecast. Because the new forecast was released at about the same time as the Idaho Power and Avista rate cases were concluded, Staff has incorporated both the new cost of capital figures and the new natural gas prices in the computation of new avoided cost rates using the approved methodology.

The practice of updating avoided cost rates due to new fuel price forecasts can be traced to Order No. 29124. In that Order, the Commission adopted a fuel price forecast dated April 25, 2002 from the draft Fifth Northwest Conservation and Electric Power Plan of the Northwest Power Planning Council (NWPPC) as a reasonable method for calculating a starting gas price in the avoided cost methodology. The Commission stated that "natural gas prices can be updated when a new NWPPC forecast become available." Order No. 29124 at 10. The Commission has since approved updated gas prices based on an April 22, 2003 NWPPC forecast in December 2003. Order No. 29391.

Staff reported that the new rates computed using the Council's September 24, 2004 natural gas price forecast and Idaho Power's revised costs of capital are approximately 5 mills/kWh higher than the rates currently in effect and that are contained in the Agreement. On a present worth basis over the life of the contract, the revenue from the Project if paid under the existing rates will be approximately $1.4 million less than if the new rates were applied.

Staff believes that the timing of the Agreement's submission to the Commission and the NPCC's recently released natural gas price forecast raises legitimate questions of which avoided cost rates should apply to the Fossil Gulch Firm Sales Agreement—the current avoided cost rates in effect at the time the Firm Sales Agreement was signed or updated avoided cost rates that could be available when the Commission issues an Order in this case. While Staff raises this issue for Commission consideration, we believe that the Commission should limit consideration to the Agreement as presented to it and as signed by the parties. The rates currently in effect are the rates incorporated in the Agreement and no other rates are yet available. Therefore, Staff believes the Commission should approve the Agreement as submitted.

Contract Terms and Conditions: Some of the terms of this Agreement—specifically the capacity limit of 10,000 kWh per hour and the 90-110% performance band—

have been included in several contracts previously approved by the Commission. Although these contract terms are currently the subject of dispute in Case Nos. IPC-E-04-8 and IPC-E-04-10, Staff recommends approval of these terms in this Agreement because both parties have mutually agreed to them.

Environmental Attributes: As pointed out by Idaho Power in its Application, the Agreement includes the same Environmental Attributes provision (Section 8.1) approved by the Commission in Order No. 29577 for the J.R. Simplot Pocatello QF contract. The Agreement does not provide for any purchase of the Project's Environmental Attributes by Idaho Power, and the Company is not seeking to recover any value for Environmental Attributes in this Agreement. Staff notes, however, that it did not oppose allowing Simplot to retain the project's Environmental Attributes for the Simplot Pocatello project in part because Staff did not believe the project actually possessed any Environmental Attributes. Unlike Simplot's thermal project, Fossil Gulch is a renewable wind project with definite Environmental Attributes. Staff believes that a Commission decision regarding ownership of them will have real significance and could establish a precedent for future contracts. Staff recommends that the Commission approve the contract terms allowing Fossil Gulch to retain ownership of any Environmental Attributes associated with the Project.

Recommendation: Staff recommends approval of the contract as submitted. Staff also recommends that the Commission declare that all payments Idaho Power makes to Fossil Gulch for energy purchases under the Agreement be allowed as prudently incurred expenses for ratemaking purposes.

COMMISSION DECISION

Does the Commission wish to approve Idaho Power Company's Application requesting an Order approving a Firm Energy Sales Agreement dated September 9, 2004, between Idaho Power and Fossil Gulch Wind Park, LLC with the avoided cost rates set forth in the Agreement?

Lisa Nordstrom

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