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IDAHO PUBLIC
UTILITIES COMMISSION

ORIGINAL

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
IDAHO POWER COMPANY FOR AN
ORDER TEMPORARILY SUSPENDING
IDAHO POWER'S PURPA OBLIGATION TO
ENTER INTO CONTRACTS TO PURCHASE
ENERGY GENERATED BY WIND-
POWERED SMALL POWER PRODUCTION
FACILITIES.

Case No. **IPC-E-05-22**

**ANSWER TO STAFF'S PETITION
FOR RECONSIDERATION**

COME NOW Magic Wind LLC, Cassia Wind Park LLC, Cassia Wind LLC (collectively "Magic and Cassia") and, pursuant to IPUCRP 331.05, Answer the Commission Staff's Petition for Reconsideration dated August 31, 2005 ("Staff Petition") as follows, to wit:

Magic and Cassia concur, in part, in Staff's critique of the Windland Petition for Reconsideration in so far as Windland contends current avoided costs are too high. Staff correctly observes "that current rates are presumed just and reasonable, and remain the effective avoided cost rates until determined otherwise by the Commission." (Staff Petition, pg. 3).

Windland's "self-serving belief" to the contrary does not make the current rates unreasonable. (Staff Petition, pg. 2).

Magic and Cassia disagree, however, with Staff's contention that the *A.W. Brown* policy regarding grandfathering should apply in this case. The policy adopted in *A.W. Brown* and similar cases having to do with changes to published PURPA rates was that there must either be a signed contract or a meritorious complaint at the time of the proposed change in rates. See *A.W. Brown v. Idaho Power*, 121 Idaho 812,828 P.2d 841 (1992).

In contrast, in the present case, the Commission adopted threshold criteria of either submittal of a signed contract or submittal of an Application for Interconnection Study, coupled with other evidence of project maturity. See Order No. 29839.

As discussed in Magic and Cassia's Answer to Windland's Petition for Reconsideration, the *A.W. Brown* policy was a permissible, but not legally mandated policy for determining which projects were entitled to older, higher PURPA rates and which projects would have to be content with newer, lower rates. The Staff Petition correctly observes that the policy adopted in Order No. 29839 is different from the *A.W. Brown* standard, but the Staff Petition does not make a case that the *A.W. Brown* standard is legally required.

The present circumstance is different from the circumstance in *A.W. Brown* and similar cases, justifying a different exemption policy. In *A.W. Brown* and similar cases the only matter at issues was rates. Even if a project was only entitled to the newer lower rates, it was still entitled to a contract and the other features of the PURPA regulatory structure remained in place. Here, the circumstance is much different. By lowering the published rate eligibility cap to 100 kW from 10 mW the Commission has turned the regulatory structure on its head. Projects that were currently in progress do not have a new, lower rate that they can accept if desired. Instead, they are not entitled to a published contract rate unless they reduce their size by 99% to qualify

under the 100kW sized project. A different, broader, exemption policy is justified by this different circumstance.

At the July 22, 2005 hearing in this matter, Staff itself recognized there were substantial policy reasons favoring an exemption policy different from *A. W. Brown*. Staff supported a policy not identical to but similar that ultimately adopted by the Commission.

The following questions and answers of the Staff policy witness occurred:

Q. First, Mr. Sterling, I take it that it's the Staff's view that starting in very general terms that projects that have expended measurable or somewhat considerable time, effort and money, in reliance on the Commission's current rules should be exempt from any suspension or modification of the eligibility criterias; is that a generally true statement?

A. Yes, I generally would agree with that.

Q. Have you had the opportunity to review the brief that was filed by Magic and Cassia on July 15th?

A. Yes, I have.

Q. And in that brief, Magic and Cassia set forth a proposal to specifically implement the general proposition we have just discussed, which is that developers who have filed an interconnection application should be exempt from any suspension or modification of the eligibility rules. I wanted to ask, what is Staff's reaction to that proposal?

A. I think it's a reasonable proposal. Staff made its proposal and Magic's is also a reasonable proposal and Cassia.

Q. What would happen in your view if implementation of that proposal somehow came into conflict with the Company's 200 megawatt RFP desires?

A. Well, I think it's unfortunate that we have this conflict with the RFP; however, I think we are where we are today and I think the fact that people have relied on the existing rules and progressed with their contracts or their interconnection applications, it may ultimately destroy Idaho Power's RFP and I think that's unfortunate, but I think that's where we are today. I don't think that it would be fair to preserve Idaho Power's RFP at the expense of people that have in good faith relied on the existing rules.

Having said that, though, I think that illustrates the very problem that has caused this proceeding to happen in the first place and that is that Idaho Power will be obligated or could be obligated, depending on how the Commission decides this case, to purchase from PURPA projects at prices that are considerably higher than they otherwise would purchase comparable resources if they could proceed under an RFP, but again, I don't think we can undo what's already happened.¹

(T. pgs. 135—136).

In its Order, the Commission correctly noted that several projects relied on the written instructions of the IPCo Interconnection Application for pursuing a Purchase Power Agreement.

The Commission wisely chose to include submission of Interconnection Application and

¹ As demonstrated in Magic and Cassia's Reply to Windland's Petition for Reconsideration a true comparison shows that PURPA rates are not greatly, if at all, in excess of anticipated RFP prices. (See Magic and Cassia's Answer to Petition for Reconsideration, August, 30, 2005). Staff's concern on this point is not well founded. But, even if it was, Staff's position at hearing was that fairness to those who relied on the Commission's policies outweighed concerns about paying too much.

payment of fees, as one of the two main criteria in determining which projects were sincerely pursuing completion of the project. Projects that were willing to follow the directions of IPCo and pay thousands of dollars for interconnection applications are just as sincere and committed as those companies signing and submitting a Purchase Power Agreement.

Thus, the exemption policy established in Order No. 29839 strikes an appropriate balance of competing interests in the circumstances of this case and should be retained.

CONCLUSION

Based on the reasons and authorities cited herein the Staff Petition should be denied.

DATED this 7 day of September, 2005.

Respectfully submitted,

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