

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)
IDAHO POWER COMPANY FOR AN) **CASE NO. IPC-E-05-22**
ORDER TEMPORARILY SUSPENDING)
IDAHO POWER'S PURPA OBLIGATION TO)
ENTER INTO CONTRACTS TO PURCHASE)
ENERGY GENERATED BY WIND-) **ORDER NO. 29851**
POWERED SMALL POWER PRODUCTION)
FACILITIES)

On June 17, 2005, Idaho Power Company (Idaho Power; Company) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting a temporary suspension of the Company's obligation under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and various Commission orders, to enter into new contracts to purchase energy generated by qualifying wind-powered small power production facilities (QFs). On July 1, 2005, the Commission issued Notices of Petition and Intervention Deadline in Case No. IPC-E-05-22. A public hearing and oral argument was held on July 22, 2005 in Boise, Idaho to address the requested temporary suspension of Idaho Power's PURPA obligation to enter into contracts to purchase energy generated by wind powered small power production facilities, the need for and appropriateness of such relief and related procedural and jurisdictional matters, and/or the Commission's power to suspend the PURPA avoided cost rate for wind facilities.

On August 4, 2005, the Commission issued Interlocutory Order No. 29839. The Commission's Order reduces the published rate eligibility cap for non-firm wind projects to 100 kW, requires individual negotiation for larger wind QFs, establishes criteria for assessing QF contract entitlement and discusses further procedure. The Commission's Order, in part, contains the following findings:

At the beginning of hearing on July 22, the Commission adjourned to allow the parties to explore whether any consensus could be reached regarding those PURPA projects that were in various stages of negotiation with Idaho Power. The parties were unable to reach consensus. Accordingly, this Commission finds it reasonable to establish the following criteria to determine the eligibility of PURPA qualifying wind generating facilities for contracts at the published avoided cost rates. For purposes of determining eligibility we find it reasonable to use the date of the Commission's Notice in this case, i.e., July 1, 2005. For those QF projects in the negotiation queue on

that date, the criteria that we will look at to determine project eligibility are: (1) submittal of a signed power purchase agreement to the utility, or (2) submittal to the utility of a completed Application for Interconnection Study and payment of fee. In addition to a finding of existence of one or both of the preceding threshold criteria, the QF must also be able to demonstrate other indicia of substantial progress and project maturity, e.g., (1) a wind study demonstrating a viable site for the project, (2) a signed contract for wind turbines, (3) arranged financing for the project, and/or (4) related progress on the facility permitting and licensing path.

On August 5, 2005, Windland Incorporated (Windland) filed a Petition for Reconsideration of Order No. 29839. Reference *Idaho Code* § 61-626; Commission Rule of Procedure 331.01. Windland requests that the Commission reconsider its decision regarding “grandfathering,” contending the published avoided cost rates for wind QFs do not accurately reflect the cost of alternative energy and are unjust and unreasonable. On August 10, 2005, Windland filed a Petition requesting that the Commission treat as final that part of Order No. 29839 that established grandfathering criteria to determine the eligibility of certain PURPA qualifying wind generating facilities for contracts at the published avoided cost rates established in Order No. 29646. Reference Commission Rules of Procedure 321.01; 323.03.

On August 9, 2005, Windland filed a Petition for Stay of the Commission’s Order No. 29839 until such time as Windland’s Petition for Reconsideration regarding “grandfathering” is resolved and/or until such time as the Commission issues an Order regarding the law governing grandfathering and the parties’ relationships concerning wind powered QF contracts. Reference Commission Rule of Procedure 324.

Commission Findings

The Commission has reviewed and considered the filings of record in Case No. IPC-E-05-22 including our Order No. 29839 and the related Petitions of Windland Incorporated.

Windland Incorporated, an intervenor in this case, has filed three Petitions with the Commission, i.e.:

August 5, 2005 – Petition for Reconsideration, reference *Idaho Code* § 61-626; RP 331.01

August 10, 2005 – Petition requesting that the Commission treat as final its findings in Order No. 29839 regarding “grandfathering.” Reference RP 323.03.

August 9, 2005 – Petition for Stay of the Commission’s Order No. 29839 regarding “grandfathering” until such time as Windland’s Petition for Reconsideration is considered and resolved. Reference RP 324.

The Commission’s Order No. 29839 was not designated as a final Order and by Commission Rules is therefore an Interlocutory Order. Reference Commission Rule of Procedure 321.01 (Interlocutory Orders) and 323.01 (Final Orders). Pursuant to Commission Rule of Procedure 323.03 whenever a party believes that an Order not designated as a final Order according to the terms of the Commission’s Rules should be a final Order, the party may petition the Commission to designate the Order as final. Once an Order is designated as final after its release, its effective date for purposes of reconsideration or appeal is the date of the Order of designation. Once designated as final, the statutory timelines for petitions for reconsideration and cross-petitions are triggered. Reference *Idaho Code* § 61-626, RP 331.01 – Petition for Reconsideration (21 days) and .02 – Cross-Petition for Reconsideration (7 days).

The Commission finds it reasonable to grant Windland’s RP 323.03 Petition and by this Order treats as final only that portion of Order No. 29839 that establishes grandfathering criteria to determine the eligibility of certain PURPA qualifying wind generating facilities to contracts at the published avoided cost rates established in Order No. 29646. As Windland’s Petition for Reconsideration was filed prior to the Interlocutory Order being designated as a final Order, we find it reasonable to treat Windland’s August 5, 2005 Petition for Reconsideration as filed on the first business day following the date of service of this Order. We make no findings regarding the merits of Windland’s Petition for Reconsideration.

Regarding Windland’s Petition for Stay, the Commission notes that any person may petition the Commission to stay any order, whether interlocutory or final. Reference Commission Rule of Procedure 324. Windland’s Petition for Stay was filed August 9, 2005. Answers to Petitions are timely under Commission Rule of Procedure 57.02 if filed within 21 days. An answer to Windland’s Petition for Stay is timely if filed on or prior to August 30, 2005. As the time for answer has not expired and because the Commission wishes to provide other parties with an opportunity to respond, we find that no action by the Commission regarding Windland’s Petition for Stay is required at this time.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, Avista Corporation dba Avista Utilities, and PacifiCorp dba Utah Power & Light Company, electric utilities, 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 (QFs) and to implement FERC rules.

ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that Windland Incorporated's RP 323.03 Petition is granted and the following language set forth in prior Interlocutory Order No. 29839 is hereby designated a final Order for purposes of reconsideration and appeal.

At the beginning of hearing on July 22, the Commission adjourned to allow the parties to explore whether any consensus could be reached regarding those PURPA projects that were in various stages of negotiation with Idaho Power. The parties were unable to reach consensus. Accordingly, this Commission finds it reasonable to establish the following criteria to determine the eligibility of PURPA qualifying wind generating facilities for contracts at the published avoided cost rates. For purposes of determining eligibility we find it reasonable to use the date of the Commission's Notice in this case, i.e., July 1, 2005. For those QF projects in the negotiation queue on that date, the criteria that we will look at to determine project eligibility are: (1) submittal of a signed power purchase agreement to the utility, or (2) submittal to the utility of a completed Application for Interconnection Study and payment of fee. In addition to a finding of existence of one or both of the preceding threshold criteria, the QF must also be able to demonstrate other indicia of substantial progress and project maturity, e.g., (1) a wind study demonstrating a viable site for the project, (2) a signed contract for wind turbines, (3) arranged financing for the project, and/or (4) related progress on the facility permitting and licensing path.

Order No. 29839, pp. 9-10.

IT IS FURTHER ORDERED that the August 5, 2005 Petition for Reconsideration of Windland Incorporated is to be viewed for statutory and procedural purposes as filed on the first business day following the service date of this final Order.

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 23rd day of August 2005.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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