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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 OF AN ENERGY SALES AGREEMENT FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY BETWEEN IDAHO POWER COMPANY AND CO-GEN CO, LLC	**CASE NO. IPC-E-06-2** **ADDITIONAL COMMENTS OF THE COMMISSION STAFF**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Cecelia A. Gassner, Deputy Attorney General, and responds to the Reply Comments submitted by Idaho Power Company in this matter on April 3, 2006.

I. BACKGROUND

On January 26, 2006, Idaho Power Company submitted for the Commission's approval an Energy Sales Agreement for the sale and purchase of electric energy between Company and Co-Gen Co, LLC (Co-Gen). Co-Gen owns, operates and maintains a 10 MW nameplate capability wood waste (biomass) generation unit that is located adjacent to the Prairie Wood Products Mill in Prairie City, Oregon. The facility is approximately 100 miles west of Ontario, Oregon. The facility is located in the service area of the Oregon Trails Electric Cooperative (OTEC) and in Idaho Power's electrical control area. Generation from the facility is delivered to Idaho Power over the transmission lines of OTEC and the Bonneville Power Administration.

As represented, Co-Gen is a qualified small power production facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). In accordance with PURPA, the Public Utility Commission of Oregon (OPUC) is the state regulatory agency with jurisdiction to implement PURPA in the state of Oregon and to determine Idaho Power's avoided costs in Oregon.

On December 29, 2005, Idaho Power and Co-Gen entered into an Energy Sales Agreement in conformance with the rates, terms and conditions established by the OPUC. Under the terms of the Agreement, Co-Gen elected to contract with Idaho Power for a one-year term, commencing January 1, 2006. Co-Gen further elected to receive payments from the Company computed in accordance with the Gas Market Method (Option 3) set out in Idaho Power's Oregon Tariff No. E-85 dated August 11, 2005. Under Option 3 the rates paid to Co-Gen are based upon the average monthly spot prices of natural gas at Sumas. Reply Comments at 3.

Idaho Power requests an Order from the Commission declaring that all payments made under the Agreement shall be allowed as prudently incurred expenses for ratemaking purposes.

Idaho Power filed its Reply Comments to the Staff's Comments on April 3, 2006.

II. ADDITIONAL COMMENTS

A. The Staff's Recommendation Does Not Preclude Company's Recovery of its Costs for the Purchase of Energy from Co-Gen.

In its previously filed comments the Staff recommended that the amount recovered by the Company from Idaho ratepayers not exceed the amount that would be paid if this were an Agreement within the jurisdiction of the Idaho Commission and subject to the avoided cost rates from Order No. 29646 (currently 51.50 mills per kilowatt-hour). Staff observed that the spot market pricing of Option 3 differs considerably from the Idaho avoided costs methodology. In its Reply Comments, the Company speculates that the purchase prices it will pay to Co-Gen will exceed this amount. Further, the Company asserts that the Staff's recommendation "may result" in the Company's inability to recover all of its costs in violation of PURPA. Reply Comments at 4. The Staff respectfully disagrees with the Company's supposition.

Staff agrees that PURPA authorizes each state to determine its own avoided cost rates. However, PURPA does not mandate that a state recognize another state's rates for recovery within its jurisdiction. In addition, the Federal Energy Regulatory Commission (FERC) has recognized that states may set their own rates for QF-generated energy but also does not require a state to adopt the rates of another state.

Idaho Power is in no way stymied in its path to full cost recovery. Indeed, the avenue for such recovery is wide open – it may seek recovery of the costs from Oregon. The OPUC has approved of the Gas Market Method to set rates, and Idaho Power is entitled to seek recovery of any costs not approved in Idaho from the OPUC when it files its next rate case.

In fact, the Staff already noted in its original comments that "Staff recommends that the Commission reserve the right to adjust the amount allowed for recovery in Idaho if the OPUC ultimately does not approve the contract in Idaho Power's next general rate case in Oregon." The Staff recognizes that Oregon, though unlikely do so, may balk at allowing recovery of its own imposed rates. As a matter of first principle, however, the Staff believes that Idaho ratepayers should not bear the burden or risk of reimbursing the Company for a rate methodology established by another jurisdiction.

B. The Doctrine of Comity is Inapplicable to the Instant Matter.

Despite the Company's assertion that Idaho should apply the doctrine of comity and respect Oregon's PURPA rate mechanism, it is inapplicable to this matter. As noted, PURPA authorizes each state to implement its own avoided cost rates and is achingly silent as to requiring a state to consider the rates that another state has implemented.

Comity has not routinely been applied in PURPA-related matters. This Commission has seen other states reject the application of Idaho avoided cost rates within their own jurisdictions and has first-hand experience to demonstrate that the doctrine of comity is generally not considered in such discussions. Moreover, Idaho Power recognizes that the OPUC has primary jurisdiction over the Oregon PURPA agreement and Oregon avoided costs. Nothing compels the Idaho Commission to approve the subject agreement.

C. The Staff is Not Declaring the Oregon Tariff to be Either Imprudent or Unreasonable.

The Staff has not stated nor does it now assert that the Oregon Gas Market Method (Option 3) is either imprudent or unreasonable. It has not and does not state that the rates are exorbitant and that Idaho Power should not be able to recover its avoided costs. Instead, the

Staff recommends that the Commission recognize the PURPA methodology implemented by Idaho and limit Idaho recovery to Idaho's avoided costs. Indeed, it would be difficult for the Staff to conclude that the rates were imprudent or unreasonable as the QF chose the Gas Market Method approved by Oregon, which pegs the price paid to the QF upon the price of natural gas at Sumas. With the state of current gas markets, the Staff is not in a position to judge or predict the rates, and the Company's attempt to imply that the Staff is doing so is unavailing.

D. Conclusion.

The Staff continues to recommend that the Agreement be approved. Considering the limited scope, term and impact of this particular contract, the Commission might approve the Agreement without the proposed cap on the recovery of the costs, provided that such a decision is limited to this agreement based upon the facts of this case alone. Approval of this Agreement should not guarantee the future treatment of any other energy sales agreements with QFs that the Company may enter into in another jurisdiction.

Respectfully submitted this 17th day of April 2006.

Cecelia A. Gassner
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS **17TH DAY APRIL** 2006, SERVED THE FOREGOING **ADDITIONAL COMMENTS OF THE COMMISSION STAFF,** IN CASE NO. IPC-E-06-02, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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