

DECISION MEMORANDUM

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

FROM: SCOTT WOODBURY

DATE: FEBRUARY 6, 2007

SUBJECT: CASE NOS. IPC-E-06-34 (Hot Springs) AND IPC-E-06-35 (Bennett Creek)
FIRM ENERGY SALES AGREEMENTS – IDAHO POWER

On December 26, 2006, Idaho Power Company (Idaho Power; Company) filed Applications with the Idaho Public Utilities Commission (Commission) requesting approval of two 20-year Firm Energy Sales Agreements: (1) Idaho Power and Hot Springs Windfarm LLC (Hot Springs) dated December 20, 2006 and (2) Idaho Power and Bennett Creek Windfarm LLC (Bennett Creek) dated December 20, 2006 (collectively Agreements).

Background

On August 4, 2005, the Idaho Public Utilities Commission (Commission) in Case No. IPC-E-05-22, Order No. 29839, reduced the eligibility cap for avoided cost published rates for non-firm wind projects from 10 aMW to 100 kW, required individual negotiation for larger wind qualifying facilities (QFs), and established criteria for assessing QF contract entitlement. Reference Public Utility Regulatory Policies Act of 1978 (PURPA). By Commission Order No. 29872 the date for grandfathering eligibility was changed from July 1, 2004, the Notice of Petition date, to August 4, 2005, the date of Interlocutory Order No. 29839.

In Order No. 29839, the Commission also identified several criteria that it would consider to determine whether a particular QF wind generation facility, that had been in the negotiation queue when Order No. 29839 was issued, was sufficiently mature so as to justify "grandfathering" the wind generation facility to entitlement to the published rates. These criteria are as follows:

- (1) Submittal of a signed power purchase agreement to the utility, or
- (2) Submittal to the utility of 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, p. 10, August 4, 2005; final Order No. 29851).

Agreements

The Hot Springs facility will be located within Sections 25, SE Quarter of 26, 34, 35 and 36, Township 4 S, Range 8 E, and Sections 2 and 3, Township 5 S, Range 8 E, Boise Meridian, Elmore County, Idaho. The Bennett Creek facility will be located within Sections 22, 23, 26 (less southeast quarter) and 27, Township 4 S, Range 8 E, Boise Meridian, Elmore County, Idaho. Hot Springs and Bennett Creek (collectively QFs) warrant the respective facilities will be qualified small power production facilities (QFs) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). The QF facilities will consist of 12 Vestas wind turbines with individual nameplate ratings of 1.65 MW for each unit, for a total facility nameplate generator rating of 19.8 MW. The Agreements contain the non-levelized, published avoided cost rates set forth in Order No. 29391. Under normal and/or average operating conditions, the QFs will not generate more than 10 aMW on a monthly basis. Energy delivered in excess of this monthly amount is Inadvertent Energy. Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount (20 MW) but will not purchase or pay for Inadvertent Energy. Agreement ¶ 7.6.

Based on Idaho Power Company's review of the information provided by the common developer of the two projects, Idaho Windfarms LLC, and in light of the procedure the Commission accepted in Cassia Wind Order No. 29954, Case No. IPC-E-05-35, Idaho Power has determined that it would be reasonable to grandfather the Hot Springs and Bennett Creek facilities based on satisfaction of the following criteria identified by the Commission in Order No. 29839, Case No. IPC-E-05-22.

Primary criteria:

Prior to August 5, 2005, the developer had tendered signed Firm Energy Sales Agreements to Idaho Power for the facilities. This satisfies one of the two primary criteria for grandfathering.

Secondary criteria:

As of August 5, 2005, the facilities did not have signed contracts for turbines. Idaho Power has reviewed the information provided by the developer and determined that this developer believed that obtaining financing was the highest priority on the critical path to project development and directed its resources to that goal rather than turbine acquisition. As a result, prior to August 4, 2005, the developer had entered into binding commitments to obtain financing. The Company has also confirmed that as of August 4, 2005, the facilities had made substantial progress on the other secondary criteria, except for acquisition of turbines. As in the case of Cassia Wind, the developer has now obtained a firm commitment for turbines for the facilities and filed the necessary applications for interconnection to satisfy the second primary criteria.

Idaho Power notes that there are three provisions the Commission should be aware of in its consideration of the Agreements:

1. In the negotiations of these projects, Idaho Power, Bennett Creek and Hot Springs agreed that an on-line date of December 2007 is crucial to demonstrate that the projects were viable projects in August of 2005. This Agreements contain delay damage provisions that require the projects to pay Idaho Power damages if the projects come on-line after December 31, 2007. The delay damages will accrue for a period of up to 90 days.
2. The Agreements contain the methodology for computing shortfall energy payments the Commission approved in the Firm Energy Sales Agreement between Idaho Power and Fossil Gulch Wind Park, LLC (Case No. IPC-E-04-19, Order No. 29630) and recently approved for Magic Wind Park in Order No. 30206 issued in Case No. IPC-E-06-26. Hot Springs and Bennett Creek have voluntarily selected the Fossil Gulch Method. Use of the Fossil Gulch methodology is a negotiated term of the Agreements and is mutually acceptable to Idaho Power, Bennett Creek and Hot Springs.
3. The Agreements reflect the changes to Idaho Power's Schedule 72 [Uniform Interconnection Agreement] approved in Order No. 30179 issued on November 17, 2006 in Case No. IPC-E-06-18.

Hot Springs and Bennett Creek have selected March 31, 2007 as the Scheduled First Energy Date and December 31, 2007 as the Scheduled Operation Date.

Section 24 of the Agreements provide that the Agreements will not become effective until the Commission has approved all of the Agreement terms and conditions and declared that all payments Idaho Power makes to Hot Springs and Bennett Creek for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

On January 4, 2007, the Commission issued Notices of Application and Modified Procedure in Case Nos. IPC-E-06-34 and IPC-E-06-35. The deadline for filing comments was January 26, 2007. Comments were filed by supporters of renewable energy and by the Commission Staff. Reply comments were filed on February 5, 2007 by Idaho Windfarms LLC, the developer of both Hot Springs and Bennett Creek. Idaho Power filed reply comments on February 6, 2007.

Staff Comments

Grandfathering

Based on Staff's review of the information provided with regard to the primary and secondary grandfathering criteria, Staff agrees with Idaho Power that the Bennett Creek and Hot Springs facilities should be grandfathered.

Staff also comments on three provisions of the Agreements that distinguish them from other recent PURPA agreements.

On-Line Delay Damages

In the contract negotiations for the two projects, Idaho Power and the QFs agreed that an on-line date of December 2007 is crucial to demonstrate that the projects were viable projects in August of 2005. The Agreements contains delay damage provisions that require the projects to pay Idaho Power damages if the projects come on-line after December 31, 2007. The delay damages will accrue for a period of up to 90 days. Staff supports this contract provision. Staff notes that at least six recent QF projects have failed to meet their contractual on-line dates; therefore, Staff believes it is reasonable for Idaho Power to begin inserting damage provisions into PURPA contracts to provide a mechanism for the Company to be made whole if it incurs higher costs to acquire replacement power.

Shortfall Energy Payments

The Agreements contain the methodology for computing shortfall energy payments the Commission approved in the Firm Energy Sales Agreement between Idaho Power and Fossil Gulch Wind Park, LLC (Case No. IPC-E-04-19, Order No. 29630) and recently approved for Magic Wind Park in Order No. 30206 issued in Case No. IPC-E-06-26. Use of the Fossil Gulch methodology is a negotiated term of the Agreement and is mutually acceptable to Idaho Power and the QFs. Staff believes that both the Fossil Gulch method and the U.S. Geothermal method are acceptable alternatives for computing shortfall energy payments and has no objection to developers choosing their preferred method.

Separate Interconnection Agreement

The Agreements reflect the changes to Idaho Power's Schedule 72 approved in Order No. 30179 issued on November 17, 2006 in Case No. IPC-E-06-18. One of the significant changes in Schedule 72 was the creation of a standard interconnection agreement (Uniform Interconnection Agreement) that is separate from the power sales agreement. The Bennett Creek and Hot Springs projects are the first wherein separate agreements will exist for power sales and for interconnection. Neither project has yet to sign an interconnection agreement.

In response to production requests, Idaho Power states that it has no reason to believe that a Uniform Interconnection Agreement will not be signed for the two projects, and further, that if there are no cluster or queue issues that arise requiring additional studies, it is anticipated that the Uniform Interconnection Agreement could be signed by year end 2007. (December 31, 2007 is the Scheduled Operation Date for the projects.)

Ideally, Staff states that it would prefer that transmission and interconnection issues be resolved, and that a signed interconnection agreement be submitted at the same time a power sales agreement is submitted for Commission approval. Staff recognizes, however, that a QF may have good reason to pursue each agreement separately, even consecutively. The power sales agreement and the interconnection agreement for both Hot Springs and Bennett Creek are on separate tracks and their timing does not coincide. The risk to this approach, however, Staff contends, must remain with the project developer. In instances where firm transmission may not be available to accommodate a project without additional investment by the Company or consideration of non-firm transmission as an alternative, Staff contends that prices in the related power sales agreement may be affected.

The published avoided cost rates contained in the Agreements, Staff believes, are based on an assumption that firm transmission would be available to deliver a project's output without additional Company investment. Consequently, Staff believes that firm transmission capacity is a prerequisite in order for a project's output to be deliverable on a firm basis. As long as Bennett Creek and Hot Springs request firm transmission and agree to appropriate terms subsequently established for making the required transmission upgrades, the two Firm Energy Sales Agreements, Staff believes, can stand unaffected. However, should either project request non-firm transmission, Staff submits that the power product that it delivers must also be considered non-firm. Staff cannot support payment of the full published avoided cost rates contained in the Agreements unless the projects acquire firm transmission. Conversely, Staff

suggests that some downward adjustment to the contract rates could be warranted if non-firm transmission service is requested. Staff believes that the energy product delivered by Hot Springs and Bennett Creek and the price ultimately paid for that product is necessarily determined by both the terms in the power purchase agreement and the interconnection agreement.

Staff recommends approval of the terms and conditions of the two Agreements. However, Staff recommends that Commission approval of the Agreements be contingent upon the QFs requesting firm transmission service and agreeing to participate in funding any necessary transmission upgrades. Should the QFs request non-firm transmission service and decline to participate in funding any transmission upgrades, Staff recommends that the Commission reserve the ability to adjust the rates contained in the Agreements to fairly account for the reduced firmness of the energy delivered or any additional transmission cost incurred by Idaho Power.

Reply Comments – Idaho Windfarms LLC

Idaho Windfarms LLC on behalf of its affiliates Bennett Creek and Hot Springs disagrees with the portions of Staff comments that recommend inclusion of conditions related to transmission services. While Idaho Windfarms recognizes the implicit linkage between avoided cost calculations and firm transmission services, it contends that this is not the proper proceeding to deal with transmission-related issues. Idaho Windfarms' objection is based on the following:

- A record for transmission related decisions has not been developed.
- A decision on such issues is not currently required.
- Adding transmission considerations now is inconsistent with grandfathering.

Idaho Windfarms states it is aware that most of the PURPA wind projects with approved power purchase agreements are currently negotiating their interconnection arrangements. This process, it contends, has been complicated by a lack of existing policies related to the cost responsibilities associated with system upgrades. The parties face many complex issues, such as:

- The lack of explicit system upgrade costs in the current avoided cost calculation.
- The FERC requirement for reimbursement of system upgrade costs which produce network benefits.

- The quantification of network benefits.
- The reasonableness of the load and resource scenario used in the N-1 study.
- The reasonableness of the system upgrade plan.
- The appropriateness of various full or partial funding and reimbursement mechanisms.

The above issues, it states, are presently being addressed through discussions and negotiations between the parties. Idaho Windfarms contends that Bennett Creek and Hot Springs are not in the transmission constrained area near Twin Falls. Some of the issues faced by the other projects will, however, it contends, impact Idaho Windfarms transmission negotiations. Idaho Windfarms states that there has been no information placed in the record of these two proceedings which would allow for an informed Commission decision on any of these matters.

Regardless of the manner in which the issues noted above are resolved with regard to the two projects, Idaho Windfarms contends that they will almost certainly be brought to the Commission for approval. That, it states, will be the appropriate time to make decisions related to transmission services and establish the Commission's policies on these matters.

The Hot Springs and Bennett Creek projects, Idaho Windfarms contends, have each requested firm transmission service. The completed Transmission Feasibility Studies have preliminarily identified the costs associated with such service. Idaho Windfarms contends that there is no reason, in the context of this case, to assume the projects and Idaho Power will fail to achieve an appropriate agreement regarding transmission cost responsibility. Nor, it contends, is there any reason in this proceeding to predetermine the substance of, or limits on, the interconnection agreements. Idaho Windfarms believes that transmission service consistent with Idaho's avoided cost calculation is achievable, but it is too early to determine the form the interconnection agreements will take. Idaho Windfarms contends that it is unfair to force it to accept restrictions which have not been applied to the rest of the PURPA projects. That, it states, would be unreasonably prejudicial to Idaho Windfarms' upcoming interconnection negotiations. Idaho Windfarms' projects, it states, should have the same rights and obligations that are ultimately applied to the other PURPA projects.

Staff comments, Idaho Windfarms notes, correctly states that the Hot Springs and Bennett Creek projects are the first to separate transmission service and power purchasing

obligations, in compliance with the Commission's Order No. 30179. Those changes, however, it states, were essentially ministerial and did not address any of the issues related to firm transmission services and cost responsibility. Those changes, it states, do not provide a basis for restricting the projects transmission options before the establishment of the Commission's ultimate transmission policies.

Reply Comments – Idaho Power

The avoided costs contained in the Agreements, Idaho Power contends, were established on the assumption that the costs Idaho Power can avoid by purchasing firm energy from Bennett Creek and Hot Springs are financially equivalent to the fixed and variable costs of a firm, dispatchable, combined cycle combustion turbine owned and operated by Idaho Power.

At this time, Idaho Power states it has no reason to believe that the Bennett Creek and Hot Springs projects will not acquire firm transmission to allow deliveries of firm energy to Idaho Power. Idaho Power states it does not know what system upgrade costs, if any, the projects may be asked to pay so that delivery can provide firm transmission and the projects can deliver firm energy to Idaho Power. Finally, it states there is no indication that the projects intend to do anything differently than what they have contractually committed to do, that is, deliver firm energy to Idaho Power.

All that being said, Idaho Power states it is in full agreement with Staff's Comments that the projects are not entitled to be paid the published avoided cost rates contained in the Agreements unless the projects contract for firm transmission service to be provided for the full 20-year term of the Agreements.

Idaho Power recommends that the Commission include findings in its Order confirming that the published avoided cost rates are only available to QFs that obtain firm transmission for the full term of the firm energy sales agreements. The Order, it states should also provide that the requirement to obtain firm transmission would not preclude QFs from seeking lower cost firm transmission service. Finally, it contends that the Order should provide that after the projects have entered into transmission arrangements, then Idaho Power or Staff can ask the Commission to review the transmission arrangements to confirm that the rates contained in the Agreements are appropriate based on the type of transmission the projects have acquired.

COMMISSION DECISION

Firm Energy Sales Agreements for the Bennett Creek and Hot Springs wind farms have been presented for Commission approval. Idaho Power contends and Staff agrees that the projects are entitled to grandfathered treatment and exemption from the Commission's Order reducing the eligibility cap for avoided costs published rates for non-firm wind projects from 10 aMW to 100 kW. Does the Commission agree that grandfathering is appropriate?

The Agreements contain rates approved by the Commission and specific contract provisions for on-line delay damages and the Fossil Gulch method for computing shortfall energy payments. Does the Commission find the contract terms and rates to be reasonable?

Neither project has yet to sign an interconnection agreement. Staff contends that the published firm rates presume that the energy will be delivered on a firm basis. Should firm transmission capacity not be requested by the QFs, Staff contends that the rates should be adjusted downward. Idaho Power is in general agreement with Staff and believes that the Order should not be silent on this issue. Idaho Windfarms contends that the two projects have each requested firm transmission service, and that there is no reason, in the context of this case, to assume that the projects and Idaho Power will fail to achieve an appropriate agreement regarding transmission cost responsibility. Idaho Windfarms contends further that the developed record in these cases provides no basis for establishing conditions to its generation agreements related to transmission services. Does the Commission find it reasonable to approve the Bennett Creek and Hot Springs Agreements? With or without conditions related to transmission service?

Scott Woodbury

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