



1509 Tyrell Lane, Suite B, Boise, ID 83706  
Tel: 208.424.1027 Fax: 208.424.1030

March 22, 2007

Ms. Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington Street  
Boise, ID 83702-5983

RECEIVED  
2007 MAR 22 AM 11:38  
IDaho PUBLIC  
UTILITIES COMMISSION

RE: **Case No. IPC-E-07-04**

Dear Ms. Jewell:

Enclosed please find the original and seven (7) copies of the **COMMENTS OF U.S. GEOTHERMAL INC.** in the above case.

Sincerely,

**Douglas J. Glaspey**  
Chief Operating Officer

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

RECEIVED

2007 JUN 22 11:39

IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER )  
COMPANY'S PETITION TO REVISE THE )  
PUBLISHED AVOIDED COST RATES TO )  
INCLUDE A DAILY LOAD SHAPE; AND )

CASE NO. IPC-E-07-04

COMMENTS OF

TO CLARIFY THE RULES GOVERNING )  
ENTITLEMENT TO PUBLISHED AVOIDED )  
COST RATES )

U.S. GEOTHERMAL INC.

**I. Introduction**

In accordance with the Commission's Notice of Petition in the above captioned case, U.S. Geothermal Inc. respectfully submits these comments on Idaho Power's application to the Commission for an order allowing the change in published avoided costs and rules governing entitlement to published avoided costs. In general, the comments address the complexities, costs and unintended adverse outcomes of the proposed changes. The rules proposed simply do not effectively address the issues that Idaho Power Company ("Company") is trying to target. Simpler, more effective methods are available to address the Company's concerns.

**II. Daily Load Shape Adjustment**

On its face, the Company's proposal to value heavy load and light load hours differently is not objectionable, although the data utilized in setting the value for each period appears somewhat arbitrary and risky. The costs required to meet the Company's proposal, as well as the risks created, will not be offset by any resulting benefits, unless a facility under the current rules was intentionally operated in other than a base load manner, with its output weighted to light load hours. It is just as likely, perhaps more likely, that an inaccurate valuation of period prices will result in higher costs to electrical customers than a QF program based on compliance with base load operations. Adverse behavior aimed at maximizing revenues, while meeting the Commissions new definition of a "10 aMW Facility", is actually more likely to occur under the Company's proposal than it is under the current rate structure. In addition, the proposal will most adversely impact the smaller qualifying facilities ("QF's"), the facilities that are of the least concern to the Company and who can least afford the administrative burdens and direct costs.

A more direct approach would appear to be a contractual representation by the QF "that it is a base load facility and will be continuously operated during the term of the contract as a base load facility." If the Company feels that a QF is operated in a manner inconsistent with the representation, it could declare a breach and seek appropriate contractual and legal remedies.

(A) Setting Heavy Load and Light Load Values:

The Company has utilized the average Mid Columbia heavy load and light load transactions for the period January 1, 2003 through January 20, 2007. The appropriateness of that period in establishing values is unsubstantiated and many questions are left unanswered. Does this approach adequately represent "Idaho Power's daily load shape" over the anticipated contract period? Why not a shorter or longer period of historical transactions? Why not a forecasted heavy load and light load price differential for future years? Does the approach adequately reflect the difference in heavy load and light load periods during different seasons within the year? Can a non base load project operate in a manner that is detrimental to the Company's customers if the values are not reflective of true market costs?

The broad and diverse nature of the QF's within the Company's QF program, has in the past and will in the future, average out any daily period production variances as long as facilities are not allowed to intentionally operate in a non base load manner. It is just as likely, perhaps more likely, that an inaccurate valuation pursuant to the Company's proposal will result in higher costs to electrical customers than a QF program based on compliance with base load operations. If the Commission accepts the Company's proposal, the electrical customers of Idaho had better hope that the high load period valuation is correct because incentives have been created for energy deliveries during that period. The Company's proposal is a complex solution, subject to unintended outcomes, which is being targeted at a very narrow issue that can be more effectively addressed through contractual terms and conditions.

(B) Costs of the Proposal:

The Company's proposal will require additional metering, recording, payment processing and administrative management for implementation. Nothing has been presented by the Company to inform the Commission of the costs of implementing the program so that a cost-to-benefit analysis can be analyzed. It is clear that the added cost burden of the Company's proposal will significantly affect the smaller QF projects, while delivering unproven and unlikely benefits to the Company and its customers. The Company should provide the Commission with an implementation plan,

including costs for both the Company and the QF, prior to any approval and implementation of the proposal so that a rational analysis of costs and benefits can be obtained.

(C) **Alternative Proposal**

As discussed above, a much more direct and effective tool targeted at addressing the Company's concern can be achieved through inclusion of simple contractual representations by the QF. Only QF facilities meeting the Commissions size limitation requirements will be impacted by the Company's proposal. Larger facilities will continue to be subject to negotiated pricing and terms and conditions. Evaluation of the Company's proposal, or the proposed alternative, should include consideration of the overlying goals of the QF program administered by the Commission and the federal and state objectives for the development of alternative energy sources. Any solution to the Company's concerns should be only as broad as required, while remaining consistent with the Commission and the State of Idaho's goal to develop diversified, relatively small, environmentally benign facilities, subject to the minimal imposition of contractual and administrative costs and burdens.

**III. Disaggregation of Large QF's Into Smaller Projects**

The Company states in its Petition that it is concerned that "larger wind powered QF projects will choose to create multiple legal entities to reconfigure themselves into multiple smaller projects in order to qualify for the historically higher published rates". The Company's concern is driven by what it perceives to be the price differential between market based rates and published QF rates. Its solution to this concern is not a discussion of appropriate rates, but the imposition of an arbitrary ownership restriction on projects located within a "five-mile radius". As discussed below, such a rule would conflict with federal law and have significant impacts on the re-contracting of existing projects, the future development of new projects and overall industry efficiencies.

The Company's proposal is contrary to federal law because PURPA's implementing regulations already provide a test for deciding whether adjacent facilities should be aggregated into a single facility for the purpose of determining whether they meet the maximum size limitations for Qualifying Facilities. In essence, the federal regulations provide that adjacent facilities shall be considered a single facility only if they are located within one mile of each other:

(2) Method of calculation. (i) For purposes of this paragraph, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located

within one mile of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.

(ii) For purposes of making the determination in clause (i), the distance between facilities shall be measured from the electrical generation equipment of a facility.

18 C.F.R. Sec. 292.204(a)(2).

Not only is the Company's proposal contrary to federal law, it is at best an indirect way of dealing with the Company's real concerns. The Company's argument is clearly with the rates established for QF's eligible for published rates, and not with some arbitrary geographical affinity of commonly owned facilities. Case No. IPC-E-07-03 currently before the Commission addresses what the Company believes to be appropriate modifications to the published rates for wind generated projects. The outcome of that case will be rates, either changed or unmodified, that the Commission has determined are in the interest of the Company's customers. If the Company believes there are inequities in the existing QF program rates, it should pursue changes in the SAR avoided costs, address the perceived intermittent value of certain resources, or address other factors it believes should be considered in QF rate setting. These changes should be pursued through appropriate and direct discussion of those issues, not collaterally through an arbitrary set of rules that will have a significant negative impact on the development of new QF projects and on the beneficial retention of existing QF projects within the state of Idaho.

(A) Re-Contracting Existing QF Projects

The rule proposed by the Company to limit the eligibility of projects for published avoided cost rates to those projects that "together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site (*defined as within a 5 mile radius*), does not exceed 10 aMW measured on a monthly basis", would have severe impacts on the re-contracting of existing QF projects. A significant number of QF contracts will expire over the next 15 year period. Many of these projects will be exploring potential new power sales agreements with the Company, or other potential purchasers, and the Company's proposed rule would disqualify the eligibility of a number of these facilities. Following are several examples of the impact of such a rule.

(1.) The Bypass (9.96 MW) and Hazelton A (7.7 MW) hydroelectric projects are located within an approximate 2 mile radius from each other on the North Side Canal Company irrigation system. The ownership of the projects has transferred since development, but is common between the two facilities.

(2.) The Hazelton B (7.6 MW) and Wilson Lake (8.4 MW) hydroelectric projects are located within an approximate 3 mile radius from each other on the North Side Canal Company irrigation system. The ownership of the projects is through subsidiaries of Ida-West Energy Co. (Idaho Power's wholly owned subsidiary) and a private investor. The power purchase contracts will terminate in 6 years.

(3.) The South Forks (7.97 MW) and Low Line Midway (2.6 MW – currently scheduled for operation in June 2007) hydroelectric projects are located within an approximate 2 mile radius from each other on the Twin Falls Canal Company irrigation system. The Twin Falls Canal Co. has ownership interests in both projects.

As these project contracts, as well as others, terminate pursuant to the terms of their initial power sales agreements, what public good is served by disqualifying these projects from published QF rates? What public good is served by encouraging the QF projects to seek contracts with other parties, potentially out of state utilities? In the case of the Low Line Midway example, what public good is served by disqualifying the two projects as a result of the Midway development (Midway will have been developed 23 years after South Forks), thereby discouraging the potential development of further renewable sites?

(B) Development of New Projects

The rule proposed by the Company to limit the eligibility of projects could have significant impacts on the development of new QF projects. Sites not developed previously may become attractive in the future for a myriad of reasons. Advancements in geothermal drilling technology, new geothermal heat transfer technology, improvements in wind turbine/generator technology, a change in land ownership rights, a change in federal and/or state tax policies, an increase in avoided resource costs, establishment or expansion of green tag credit or carbon credit based programs, and a change in the cost and availability of capital are just a few examples of why resources in the same general geographical area may be developed at different points in time. What public good is served by disqualifying these projects from published rates and discouraging their development pursuant to the QF program, established by the Commission, consistent with the interests of the electrical customers of Idaho?

(C) QF Industry Efficiencies

Ownership interests over the life of QF facilities may change for a number of reasons: consolidation, foreclosures, corporate market entry or exit, and residual contractual or leasehold rights to mention a few. None

of these potential changes has anything whatsoever to do with the Company's stated purpose in establishing the proposed rule. The ownership transfers may well be in direct response to the efficiencies that the market will require in order for the industry to be viable on an ongoing basis. The indirect impacts of the proposed rule on the efficiency of the industry could be substantial, and in any case wasteful, without producing any material benefits for either the QF or the electrical customers.

#### **IV. Conclusion**

The remedies proposed by the Company, for what it perceives to be inadequacies in the existing QF program, are contrary to existing law, clumsy, unnecessarily broad, miss-targeted, likely to result in significant and unintended outcomes, and wholly inappropriate. The risks inherent in the Company's proposal are likely to produce outcomes exactly opposite of the intended results. Many of the potential outcomes would result in costs and inefficiencies, without corresponding benefits, contrary to the interest of the state and its electrical customers. The real bottom line concern of the Company in both cases is the appropriateness of the published QF rates. The following recommendations address the Company's stated concerns, without creating costs and outcomes, which do not serve the public interest.

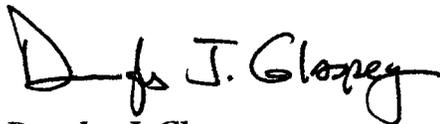
- (1.) Standard form power sales agreements for QF projects meeting the Commissions requirements shall include a representation and covenant by the QF that, "The project is a base load facility and will be continuously operated as a base load facility throughout the term of the contract". If the Company feels that a QF is operated in a manner inconsistent with the representation, it could declare a breach and seek appropriate contractual and legal remedies.
- (2.) The Company should be directed to pursue, through actions similar to it's filing of Case No. IPC-E-07-03 currently before the Commission, the remedies for what it believes are QF rate inequities through appropriate QF rate filings with the Commission.

The Idaho State Legislature has spoken clearly in support of increasing Idaho's renewable energy production with the recent adoption of the 2007 Idaho Energy Plan. The Plan specifically cites the importance of developing in-state renewable energy projects to provide a "secure, reliable energy system by reducing dependence on remote sources", and to "provide fuel diversity, reducing Idaho's exposure to high and fluctuating natural gas, oil and coal prices." In addition, the Plan recognizes that "in-state renewable resources contribute to economic growth by creating jobs and tax revenue in Idaho, frequently in rural areas that are most

in need of economic stimulus.” The changes proposed by the Company, which will increase the complexity and cost of QF projects, and would apply an arbitrary, restrictive limit on the location of QF projects, are contrary to the 2007 Idaho Energy Plan and the expressed will of the Legislature.

Finally, the changes resulting from the Oregon case cited by the Company were only accomplished through the acquiescence of all parties. U.S. Geothermal Inc, as an active QF participant with a current PURPA contract and a potential developer of additional QF projects in Idaho, strongly disagrees with the Company’s proposed changes and recommends that the Commission dismiss them in their entirety.

Respectfully submitted this 22nd day of March, 2007.

A handwritten signature in black ink that reads "Douglas J. Glaspey". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke extending to the right.

*Douglas J. Glaspey*  
*Chief Operating Officer*  
*U.S. Geothermal Inc.*

## CERTIFICATE OF SERVICE

I HERBY CERTIFY that on this 22nd day of March, 2007, I caused a true and correct copy of the foregoing comments of *U.S. GEOTHERMAL INC.* to be served by the method indicated below, and addressed to the following:

Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington Street (83702-5983)  
P.O. Box 83720  
Boise, ID 83720-0074

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Electronic Mail

Monica Moen, Attorney II  
Idaho Power Company  
1221 W. Idaho Street (83702)  
P.O. Box 70  
Boise, ID 83707-0070

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Electronic Mail

Barton L. Kline, Senior Attorney  
Idaho Power Company  
1221 W. Idaho Street (83702)  
P.O. Box 70  
Boise, ID 83707-0070

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Electronic Mail

Exergy Development Group of Idaho, LLC  
C/o Peter J. Richardson  
Richardson & O'Leary, PLLC  
515 N. 27<sup>th</sup> Street  
Boise, ID 83702

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Electronic Mail

Signed: \_\_\_\_\_

Douglas J. Glaspey

