

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>EXERGY DEVELOPMENT GROUP OF</b>	)	
<b>IDAHO LLC,</b>	)	<b>CASE NO. IPC-E-07-13</b>
	)	
<b>PETITIONER,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER NO. 30493</b>
	)	
<b>IDAHO POWER COMPANY,</b>	)	
	)	
<b>RESPONDENT.</b>	)	

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On July 22, 2007, Exergy Development Group of Idaho LLC (Exergy) filed a “formal complaint” against Idaho Power Company (Idaho Power; Company). Exergy owns and brings its complaint on behalf of five wind-power generating projects located within Idaho, each possessing an approved Firm Energy Sales Agreement with Idaho Power. The subject matter of the complaint is Idaho Power’s requirements for generation interconnection for qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA). Four of the five Exergy QF projects are part of the Twin Falls 138 kV interconnection queue. The Company has determined that capacity and operational constraints on the Company’s transmission system in the Twin Falls area require upgrading to accept all the generation being offered. In total nearly 200 MW of new generation is being offered. The sharing of transmission upgrading costs was addressed by the Commission in Idaho Power/Cassia Case No. IPC-E-06-21, Order No. 30414.

In multiple counts, Exergy contends that Idaho Power is failing to provide cost estimates for interconnection pursuant to Schedule 72 (Interconnections to Non-utility Generation), is charging unauthorized deposits as a precondition of providing cost estimates, is threatening to remove Exergy’s projects from the Company’s transmission queue for failure to pay the deposits, is failing to treat all interconnection customers in the same manner and is operating under interconnection practices and policies that have not been approved by the Commission. In this Order the Commission finds that Exergy has been provided the “initial cost estimates” required by Schedule 72 and finds that Exergy must make the study deposits requested by the Company to keep its projects in the transmission queue.

Pursuant to the Commission-issued Summons, Idaho Power on August 21, 2007, filed its answer to Exergy's complaint recommending that the relief requested by Exergy be denied and that the complaint be dismissed with prejudice. On September 12, 2007, Exergy filed a Motion (and Brief) to Compel Retention in Idaho Power's Interconnection Queue and to Prohibit Idaho Power from Assessing Illegal Interconnection Study Deposits. By way of explicit clarification, Exergy states that it accepts full responsibility for paying Idaho Power all prudently incurred interconnection costs. This case is not about cost responsibility, it contends, but rather it is about the timing of those costs. Exergy maintains that Idaho Power's Schedule 72 governs the process for interconnecting non-utility generators to the Company's system.

Schedule 72 provides in part

Unless specifically agreed otherwise in a written agreement between the Seller and the Company, an initial cost estimate of Company-owned interconnection Facilities will be provided to the seller. Payment of the estimated cost will be required prior to the Company's ordering, installing, modifying, upgrading, or performing in any other way work associated with the Interconnection Facilities. . . .

Exergy contends that Idaho Power puts the cart before the horse. The phrase "payment of the estimated cost," Exergy states, necessarily assumes that there is an estimate of the costs. Exergy contends "there is no provision in Schedule 72 for the pre-payment of interconnection costs, nor is there any reference in Schedule 72 to the imposition of deposits in advance of the provision of the 'actual cost estimate'." If the Commission had contemplated the use of deposits, Exergy contends, it would surely have provided for a mechanism for collecting, refunding, and accounting for such deposits. No utility, Exergy contends, may charge anything other than what it is permitted to charge in its tariffs. Citing *Idaho Code* § 61-313. Citing QF Power Purchase Agreements, Appendix B Paragraph B-10, Exergy contends that the agreements approved by the Commission contemplate reimbursement of Idaho Power costs, not prepayment.

Without first implementing a ratemaking procedure or opening a docket to amend Schedule 72, Exergy contends that Idaho Power and its QF customers are limited to the four corners of Schedule 72 and nothing more.

On September 26, 2007, Idaho Power filed an answer to Exergy's Motion. Idaho Power in its Answer describes FERC's four-step interconnection application process

(Application, Feasibility Study, System Impact Study, Facility Study). The Company states that it applies the Federal Energy Regulatory Commission (FERC) rules for managing priority in the interconnection queue and for processing all interconnection requests to assure compliance with FERC's regulations, and to ensure comparable treatment between QF and non-QF generation developers.<sup>1</sup> Idaho Power contends that Exergy was in fact provided initial cost estimates for its projects as part of project-specific Generator Interconnection Feasibility Studies. Answer to Motion, Exhibits 1-5. (See schedule below.) Having provided Exergy with an initial estimate of cost responsibility, the Company contends it is authorized under Schedule 72 to request an additional deposit for further interconnection studies: If Exergy wants to stay in the interconnection queue and continue with the design and cost estimation process, it can pay the additional deposit. Idaho Power states that the Company's request to Exergy is consistent with the process the Company follows for all interconnection requests. Idaho Power notes that since year 2000, the Company has received more than 200 requests for interconnection. In each instance, the Company has requested and received deposits to offset engineering and design expense and to ensure that customers have some measure of protection if a developer decides to abandon its generation project in midstream.

Exergy has already paid Idaho Power the following fees and deposits. The additional deposit requested is to proceed further in the interconnection study process.

<b>QF Project</b>	<b>Application Fee</b>	<b>Joint Study Deposit</b>	<b>Additional Deposit Requested</b>	<b>Upgrade Cost Estimate</b>
Golden Valley	\$500	\$10,588	\$35,000 Facilities Study	\$333,000
Milner Dam	\$500	\$10,588	\$100,000 Facilities Study	\$1,987,000
Notch Butte	\$500	\$10,588	\$100,000 Facilities Study	\$2,114,000
Lava Beds	\$500	N/A	\$10,000 System Impact Study	\$270,000
Salmon Falls	\$500	\$7,824	\$10,000 System Impact Study	\$2,300,000

<sup>1</sup> In its Reply to Answer, Exergy contends that it is unreasonable to assume that FERC's interconnection rules are appropriate for wholesale adoption in Idaho for QF interconnections. Many states, it argues, have adopted their own comprehensive set of interconnection rules for QF interconnections that recognize the fact that most QFs interconnect at distribution or sub-transmission voltages.

Idaho Power in its Answer to Motion states that the Company is not relying on FERC's authority as justification for collecting deposits from Exergy and that it does not need to rely on FERC's authority. The plain language in Schedule 72, it states, provides the Company with all the authority it needs to collect deposits to protect customers. The benefit of applying FERC's interconnection study process, the Company maintains, is the uniformity and consistency that it provides. Using FERC's four-stage interconnection study process and the FERC's rules for managing the QF interconnection queue, the Company contends, is completely compatible and consistent with the terms of Schedule 72. Nothing in Schedule 72, Idaho Power states, precludes the Company from taking payments for interconnection facilities in installments. A prepayment to be applied to a final bill, the Company contends, is a "deposit," regardless of what it is called.

Idaho Power recommends that Exergy's Motion be denied and that Exergy be required to post the required deposits and that the Company be authorized to remove Exergy projects from the interconnection queue for failure to do so. The costs of interconnection for all participants in the Twin Falls queue, Idaho Power states, are dependent on whether or not other projects ahead of them in the queue proceed for development. (Reference Idaho Power/Cassia Case No. IPC-E-06-21, Order No. 30414.) By remaining in the queue without providing deposits in the same manner that other queue participants have provided them, the Company contends that the Exergy projects have created uncertainty and have imposed a financial disadvantage on other participants in the queue.

Pursuant to agreement of the parties and the Commission, oral argument in this case was held on January 18, 2008. The following parties appeared by and through their respective counsel:

Exergy Development Group of Idaho LLC	Peter J. Richardson
Idaho Power Company	Barton L. Kline
Commission Staff	Scott D. Woodbury

Exergy provided copies of Federal Energy Regulatory Commission (FERC) documents pertaining to dual-use facilities and FERC and state jurisdiction over interconnection. FERC acknowledges that the jurisdiction of state or federal authorities regarding interconnection

requests can be dependent upon the type of small generator requesting interconnection and the nature of the underlying wholesale transaction. FERC suggests that uniformity in practice can be obtained by states adopting small-generator interconnect rules similar to FERC's (or the NARUC model).

Schedule 72 requires that non-utility generators requesting interconnection be provided with an "initial cost estimate." Exergy argues that Schedule 72 preceded and cannot have contemplated the FERC four-step process. Exergy wants an accurate upfront estimate it can take to the bank. Something more, it contends, is required than a non-binding back-of-envelope calculation. Use of the FERC four-step process, it contends, is putting the cart in front of the horse – it argues that Commission approval of the process is required.

Idaho Power contends there is no conflict between state and federal jurisdiction. Idaho Power contends that it has provided Exergy with the cost estimate required by Schedule 72 (see Idaho Power Answer Attachments A1-5). Idaho Power uses the FERC study process (feasibility study; system impact study; facility study) as internal policy. Under this policy QFs and all small generators requesting interconnection are allowed to prepay in incremental amounts the cost of going forward. Apart from Exergy, all other QFs, the Company contends, comply with the small-generator interconnection process; in fact, Idaho Power contends that they like the certainty and ability to exit at various stages.

Also argued by Exergy is the Company's policy of allowing small generators requesting interconnection to post letters of credit or other instruments of guarantee in lieu of actual cash deposits. The credit issue, Exergy contends, is cut from whole cloth and should not be left to the utility's discretion. Idaho Power admits that under PURPA, FERC rules and Commission Orders, the Company has no right to evaluate the credit status and finances of QFs without information being volunteered. 18 C.F.R. § 292.602(c).

### **Commission Findings**

The Commission has reviewed the filings of record in Case No. IPC-E-07-13 and has considered the oral argument of the parties. We have also reviewed the Company's Schedule 72 Interconnections to Non-Utility Generation tariff. Based on our review and consideration of same, we find the matter to be fully submitted.

In its written filings, Exergy contends "this case is not about cost responsibility, but rather about the timing of those costs." Exergy contends that Idaho Power is charging

unauthorized deposits as a precondition of providing cost estimates. A strict reading of Schedule 72 requires a prepayment of the full “initial cost estimate” as a condition of going forward in the interconnection process. The policy underlying this provision is that the Company and its customers should not be responsible for project costs in the event of a developer walk-away. The Commission finds the “estimated cost of all required upgrades” amounts included in the generator interconnection feasibility studies provided Exergy to be the “initial cost estimate” required by the Company’s Schedule 72 tariff. Under the terms of Schedule 72, “payment of the estimated cost will be required prior to the Company’s ordering, installing, modifying, upgrading, or performing in any other way work associated with the interconnection facilities.”

We find the estimate provided by the Company to be more than the “back-of-the-envelope” characterization of Exergy. The estimate is informed by the QF project specifics and the Company’s experience and knowledge of its integrated electrical system. All that is required, indeed all that can be expected, is that it be a fair and reasonable good-faith estimate. It is further expected and not unreasonable, we find, for the Company to segment the interconnection study process into increasingly greater depths of study (Feasibility Study, System Impact Study, and Facility Study) and in the instance of the Twin Falls transmission queue to require prepayment of a project’s share in additional studies as a condition of remaining in the transmission queue.

We do not find the Company’s use of FERC’s small-generator interconnection rules as an internal administrative template for QF interconnection requests to be inconsistent with Schedule 72. The process itself is available to all QF and non-QF small-generator applicants on the Company’s web page. There is no representation that the Company has been acting unreasonably or unfairly. We find the incremental study approach of the Company to be of both economic benefit to small generators requesting interconnection in assessing continued project viability and a meaningful method of encouraging the development of local renewable energy resources.

Exergy contends that use of the FERC rules as a template by the Company to achieve uniformity in practice requires Commission approval. We disagree. To achieve greater transparency between the Company’s tariffs and implementation policy, however, we find it reasonable to require the Company to propose additional language to its Schedule 72 tariff. The additional language should describe in general the three-step study process that the Company

follows including (1) opportunities to pay for additional required studies on incremental amounts, (2) opportunities to exit the interconnection process, and (3) opportunities to qualify for and provide alternative financial guarantees in lieu of full prepayment of the initial cost estimate. The Company's web site information, we find, should also be routinely monitored by the Company to assure that a consistent message is being conveyed.

### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code, the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

The Commission has authority under PURPA and 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, and to implement FERC rules.


### **ORDER**

In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission does hereby find the estimates of transmission upgrade costs provided to Exergy for its five wind-powered generating projects to be the "initial cost estimates" required under Idaho Power tariff Schedule 72. Consistent with Idaho Power's incremental study approach, as a condition of going forward in the interconnection process and for its projects to remain in the transmission queue, Exergy is required to make the study deposits for each of its projects as requested by Idaho Power.

IT IS FURTHER ORDERED and Idaho Power is directed to provide supplemental language to the Company's tariff Schedule 72 to provide greater transparency in its interconnection process.

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.

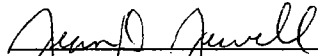
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 31<sup>st</sup>  
day of January 2008.

  
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MACK A. REDFORD, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
\_\_\_\_\_  
JIM KEMPTON, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary

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