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IDAHO PUBLIC
UTILITIES COMMISSION

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October 23, 2007

Via Hand Delivery

Ms. Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83720

Re: Case No. IPC-E-07-15

Dear Ms. Jewell:

Enclosed for filing in the above matter, please find the original and seven (7) copies of Intermountain Wind LLC's Comments.

An additional copy of the document and this letter is included for return to me with your file stamp thereon.

Thank you for you assistance.

Very truly yours,

McDEVITT & MILLER LLP



Dean J. Miller

DJM/hh
Enclosures

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Intermountain Wind LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF IDAHO POWER'S
PETITION TO MODIFY THE
METHODOLOGY FOR DETERMINING
FUEL COSTS USED TO ESTABLISH
PUBLISHED RATES FOR PURPA
QUALIFYING FACILITIES**

IPC
Case No. ~~PAC~~-E-07-15

COMMENTS

COMES NOW Intermountain Wind LLC ("Intermountain") and, pursuant to the Commission's Notice of Petition dated September 27, 2007, submits the following Comments to wit:

Introduction

In this proceeding, the Petitioner Idaho Power Company ("Idaho Power"), asks the Commission to adopt a new method for calculation of gas prices in determination of avoided cost rates.

Intermountain is an Idaho limited liability company that desires and intends to develop PURPA wind projects in the State of Idaho, and, accordingly has a direct and substantial interest in the proceeding.

For the reasons set forth below, Intermountain recommends that the Petition of Idaho Power be denied.

Argument

Idaho Power's Proposal is Inconsistent with the Policy Disfavoring Single Issue Rate Cases.

In the context of retail rate-setting, the Commission has historically resisted the idea of conducting "single issue rate cases." A single issue rate case is a proceeding in which one item, out of many, is proposed to be adjusted in the calculation of rates. Adjustment of only one item that makes up an overall rate, without examining all components of the overall rate, makes it impossible for the Commission to make the statutorily required finding that the overall rate is "fair just and reasonable." (See Idaho Code 61-502).

The only exception to the policy against single issue rate cases is with respect to expenses that are uncontrollable. In *J.R. Simplot Company v. Intermountain Gas*, 102 Idaho 341, 630 P.2d 133 (1981) the court said:

"Where, as in this case, the utility has no control over substantially increased costs, and pass-through rate increase to cover the additional costs will not impact the authorized rate of return. In such situations, the common utility regulation practice is to permit a scaled down proceeding focusing only on the particular increase."

The Commission has followed the *Simplot* rule and employed single issue cases only with respect to uncontrollable expenses. (See In the Matter of the Investigation of the Effects of Revisions of the Federal Income Tax Code, Case No. U-1500-164, Order No. 21640 (1987)).

Avoided costs rates established under the Public Utility Regulatory Practices Act of 1978 (PURPA), are subject to the same "fair just and reasonable" standard as are retail rates. "The rates for such purchases (from qualifying facilities) shall be just and reasonable to the electric consumers of the electric utility and in the public interest." 16 U.S.C. 824a-3(b)(1).

Idaho Power's proposal to adjust only one element of the avoided cost calculation makes it impossible for the Commission to make the statutorily required public interest finding that the resulting overall rate is just and reasonable. Further, Idaho Power is not seeking to pass through an uncontrollable expense but, instead, is proposing a change in the method by which expenses are projected.

For both of these reasons, Idaho Power's proposal is inconsistent with the policy disfavoring single issue rate cases.

This is not to suggest that the Commission should, at the present time, undertake a proceeding to examine all elements of the avoided cost rate. Since the issuance of Order No. 29872, in Case No. IPC-E-05-22 in September of 2005, there has been a *de facto* moratorium on the development of PURPA projects larger than 100 kW. Only projects that meet the Commission's "grandfathering" criteria contained in Order No. 29872 have been able to proceed. In Case No. IPC-E-05-02, Idaho Power estimated that a moratorium period of nine (9) months would be adequate to investigate the issue of wind integration costs. (*See* Testimony of Ric R. Gale, Case No. IPC-E-05-02). The moratorium is now stretching into its third year.

In Case No. IPC-E-07-03 the Commission now has before it a Settlement Stipulation resolving the integration cost issue and which, if approved, would allow the moratorium to be terminated. In general, that settlement proposes an integration cost mechanism that would reduce avoided costs by eight percent (8%), or up to \$6.50 per Mwh.

In the present case, Idaho Power proposes an adjustment to the gas price calculation that would reduce avoided costs by \$4.50 per Mwh from the rate level that would exist if Idaho Power's proposal is not adopted. (*See* Petition to Modify Methodology, Attachment 4).

Thus, the combined effect of the integration cost adjustment and the proposed change in gas methodology could reduce avoided costs by up to \$11.00 per Mwh, resulting in an effective rate below the current published rate for contracts with a 2007 on-line date.

In Intermountain's opinion, the effective rate produced by these combined adjustments would seriously and negatively impact project feasibility and could have the practical result of continuing the *de facto* moratorium currently in effect. Intermountain further suggests that after a two-year hiatus, at the present time the Commission's primary policy objective should be to restart PURPA implementation in Idaho. Accepting Idaho Power's proposal to adjust only one rate element in a single issue rate case would put that policy objective in jeopardy.

Idaho Power's Proposal is an Impermissible Collateral Attack on Order No. 29124.

Idaho Code 61-625 provides, "All Orders and decisions of the commission which have become final and conclusive shall not be attached collaterally." The purpose of this prohibition is to afford orders of the Commission a degree of finality similar to that possessed by judgments made by a court of law. *Utah-Idaho Sugar Company v. Intermountain Gas Company*, 100 Idaho 368, 597 P.2d 1058 (1981). "A different rule would lead to endless consideration of matter previously presented to the Commission and confusion about the effectiveness of Commission orders." *Supra at 373*.

The current methodology for escalation of gas prices was adopted in Case No. GNR-E-02-1, Order No. 29124 (2002). A review of the transcript and testimonies in that case discloses that gas price methodology was a central contested issue and the Commission had before it six different recommended methodologies. (*See* Rebuttal Testimony of Dennis Peseau on behalf of Idaho Power Company). One of the methods was proposed by expert witness Stuart Tripple on behalf of the Independent Energy Producers of Idaho. Idaho Power opposed this method

claiming it would produce avoided costs that were too high. (See Peseau Rebuttal Testimony, *supra*). Ultimately, after due consideration, the Commission adopted the methodology proposed by Mr. Tripple. (See Order No. 29124, pg. 11).

In the present case, the thrust of Idaho Power's argument in favor of changing the methodology is not that there has been a change in circumstances that warrant a departure from the current method. Rather, Idaho Power argues, as it did in GNR-E-02-1, that method produces a result Idaho Power believes to be too high.

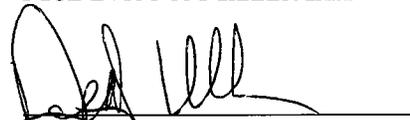
Conclusion

At the present time, the Commission's primary policy objective should be to re-start PURPA implementation in Idaho. The current method of gas price calculation was adopted by the Commission based on a complete record and after due consideration. The Commission should not use the vehicle of a single issue rate case to reconsider arguments against the current method, when to do so would put the goal of PURPA re-implementation in jeopardy. The Commission should enter its Order denying the Petition.

DATED this 23 day of October, 2007.

Respectfully submitted,

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Counsel for Intermountain Wind LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2007, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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By: Heather Hule, legal assistant